SENATE—*Thursday, September 17, 1998*

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

The PRESIDENT pro tempore. Today's prayer will be offered by the guest Chaplain, Levi Shemtov, Rabbi, Director of the Washington Office, American Friends of Lubavitch, Washington, DC. Glad to have you with us.

PRAYER

The guest Chaplain, Rabbi Levi Shemtov, Director of the Washington Office, American Friends of Lubavitch, offered the following prayer:

Almighty God, our Father in Heaven, bless and grace this august body, the United States Senate. Fill this Chamber and through it the Nation with the strength of Your sovereignty and the power of Your comfort. May the Members of this body and its officers strive always to glorify Your name and through their devotion to You and true service to the inhabitants of the Nation.

As the Jewish New Year (Rosh Hashanah) approaches, commemorating the anniversary of Your creation of man, we stand before You while You sit in judgment. May this feeling of our ultimate need for mercy pervade our lives, and may we judge each other at least as favorably as we would like to be judged ourselves.

As our Nation faces tremendous challenges, we also possess a deep, enormous faith and capacity for healing. The Senate, reflecting the Nation, comprises men and women from various political, cultural, and religious backgrounds. We are thankful for the freedom to bring various views, but as we debate the significant issues of the day, let us remember the words of the Lubavitcher Rebbe, Rabbi Menachem M. Schneerson, of blessed memory, who taught, "the only way to soothe the differences between two sides is to seek how we are ultimately all on the same side."

Three hundred years ago, the Great Baal Shem Tov, founder of Chassidism, taught us that in every experience lies Divine Providence, giving man the ability to find and develop divinity in seemingly everyday activities. As the officers and Members of the Senate and their staffs go about their noble task of legislating the path for our Nation, with the will of the people, please let them see in their work not just mere political activity but divine endeavor, nothing less than partnership with God in perfecting the world, bringing redemption to all of mankind.

A happy and a healthy new year.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT of Mississippi, is recognized.

THE GUEST CHAPLAIN'S PRAYER

Mr. LOTT. Mr. President, on behalf of the Senate, I thank the rabbi for being with us this morning and for his prayer. We know this is a holy season for those of the Jewish faith, and we are pleased that you would join us and give us your prayer and ask for the Lord's blessings.

ORDERS FOR TODAY

Mr. LOTT. Mr. President, I ask unanimous consent the Journal of Proceedings be approved, no resolutions come over under the rule, the call of the calendar be waived, the morning hour be deemed to have expired, and the time for the two leaders be reserved.

The PRESIDING OFFICER. Without objection, it is so ordered.

SCHEDULE

Mr. LOTT. Mr. President, we are still consulting with both sides to see if we will be able to go forward this morning. It is Thursday morning and it seems to me this would be a good time to make some legislative progress on the people's business. We had great difficulty yesterday, trying to schedule votes around Senators' own interests which I thought, in many instances, were inappropriate. I urge my colleagues to not put their own conveniences over the interests of the people's business or their other 99 colleagues.

Also, while there are obviously distractions and disagreements on what should be the business of the Senate, there are some things that we can do and should do. Unfortunately, yesterday we were not able to even go forward with debate because we could not get an agreement as to how to proceed on the issues. We have a unanimous consent agreement that we reached last Thursday that seemed to be fair and satisfactory to one and all on how to proceed on the bankruptcy reform legislation, including, at the insistence of the Senator from Massachusetts, a vote on a minimum wage.

We agreed that we would have a vote as soon as we took up the bankruptcy bill, we would have 2 hours of debate on minimum wage and then a vote. The Senator indicated he had hoped we would do that in the morning, rather than late at night, and we have wanted to try to accommodate that. But when we said, OK, good, Thursday morning, we will start at 9:30, we will do the debate, have a vote at 11:30 on minimum wage, he indicated he didn't want to do that.

So I don't know. I understand maybe he has a press conference at the White House, but he has to make a decision here. You know, are we going to go for press conferences, or are we going to go for the vote on something he says is very important to him, the minimum wage issue? I assume he will be here later and we will get something worked out as to how to proceed on that. In the meanwhile, I hope we can go ahead and go forward with bankruptcy, bankruptcy amendments. We have a list that we agreed to, amendments that are not subject to second-degree.

There was a misunderstanding about one of them, and the sponsor of that amendment has very graciously agreed to not offer that amendment, Senator HATCH, on the intellectual properties issue. And there are some other controversial issues that we are going to work together on in a bipartisan way.

So I hope we would try to make some progress on that. Senator DURBIN is here, one of the sponsors of the bankruptcy reform bill. Senator GRASSLEY is right here ready to go. So as soon as we can get a confirmation that we were able to get together on that, we will make that announcement to Members.

I might say, we should expect votes on amendments throughout the day. And, from 2 to 6 this afternoon, we will have the debate on the partial-birth abortion ban veto override. And then we hope to come back to the bankruptcy after that, and then have a couple of votes tonight on amendments—one or two or three, whatever—that we can stack, so that Members will know when those votes would occur.

Let me read here now the unanimous consent that we have worked out.

UNANIMOUS CONSENT AGREEMENT—S. 1301 AND THE VETO MESSAGE TO ACCOMPANY THE PARTIAL-BIRTH ABORTION BILL

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now proceed to S. 1301 under the provisions of the consent agreement of September 11. I further ask that at 2 p.m., the bill be laid aside and there be 4 hours for debate, equally divided, on the veto message to accompany the partial-birth abortion bill, with speakers alternating between the proponents and opponents.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

I further ask that at 6 p.m. the Senate resume consideration of S. 1301.

Finally, I ask unanimous consent that at 8:30 a.m. on Friday, September 18, there be 1 hour for debate, equally divided, on the abortion veto message and a vote occur at 9:30 a.m. on the question: Shall the bill pass, the objections of the President to the contrary notwithstanding?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I appreciate the cooperation getting this time agreed to.

Mr. President, before I yield the floor to the managers of the legislation, I do want to take just a moment of leader time to make a plea for Senators, once again, to consider very carefully how they will vote this afternoon on the partial-birth abortion ban issue.

The vote will be close. We need 67 Senators to override that veto. I believe there is no more important issue that we will vote on this entire year. I don't see how any Senator can defend this procedure.

I took the time while I was home, about a year ago, to talk to Dr. Julius Bosco, the OB/GYN who delivered both of my own children. Originally from Brooklyn, NY, he was in the Air Force as a doctor, came to Keesler Air Force Base, married a local girl, and we couldn't get rid of him—he stayed. He is a great doctor and a great man. I asked him, Dr. Bosco, are there any circumstances at any time, any justification for this procedure being used? And he said, "Never."

Three Senators hold the results of this veto override in their hands, and it will weigh on their conscience. I hope that the Senate will override this veto.

I yield the floor.

CONSUMER BANKRUPTCY REFORM ACT OF 1998

The PRESIDING OFFICER (Mr. DEWINE). The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1301) to amend title 11, United States Code, to provide for consumer bankruptcy protection, and for other purposes.

Pending:

Lott (for Grassley/Hatch) amendment No. 3559, in the nature of a substitute.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

AMENDMENT NO. 3595 TO AMENDMENT NO. 3559

(Purpose: To provide for dismissal of a case when a debtor abuses the provisions of the Bankruptcy Code)

Mr. GRASSLEY. Mr. President, I send a managers' amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. GRASSLEY], for himself and Mr. DURBIN, proposes an amendment numbered 3595 to amendment No. 3559.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. GRASSLEY. Mr. President, our procedure today is we have the managers' amendment pending. We will lay this amendment aside from time to time as Members come over to offer amendments. I am going to visit with Senator DURBIN on procedure. So, in the meantime, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. I thank the Chair.

(The remarks of Mr. WELLSTONE pertaining to the introduction of S. 2489 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. WELLSTONE. I yield the floor.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. We hope very much that Members on both sides of the aisle will come to the floor and offer amendments on the bankruptcy bill. Both sides have reached an agreement on the number of amendments to be offered. All we have to have is time agreements on those amendments, and if a vote is necessary on those amendments, have a vote.

Senator DURBIN has worked very hard with me for his part, for the Democratic Members, as I have for the Republican Members, to get a very good bankruptcy bill before this body. It was hard work for the last year putting a bill together. I really appreciate his cooperation, including getting it through the Judiciary Committee by a vote of 16–2, then additionally accommodating some other Members who are not on the Judiciary Committee, the committee of jurisdiction over bankruptcy.

We accommodated several Members, both on the Judiciary Committee and not on the Judiciary Committee, through the consideration of their amendments in some negotiating sessions we had last week to limit the number of amendments, also to accept, as I have indicated, in the managers' amendment many of the ideas that people have.

So since Senator DURBIN and I have worked together in a cooperative and very much bipartisan way on this legislation, we hope that at these almost midnight hours of this session, as well as midnight hours of the consideration of this legislation through the process of a year and a half, that we would not have Members stalling by not coming to the floor and offering their amendments.

So we hope very much that people will come over and do that. We are ready for those considerations. The floor leaders of both parties very much want to see this legislation pass. And we ought to do that because, as Senator DURBIN and I have described for the Members of this body, there is very much a need for this legislation, and particularly since we have this tradition of bipartisanship on the issue of bankruptcy, not only between Senator DURBIN and myself but historically over the last decade and a half between his predecessor, Senator Heflin, now retired from the Senate, and myself. We want to keep that tradition going. There is just now the one simple process of Members coming over here and offering amendments that we have all agreed should be considered.

There is no controversy at this point, except should an amendment be adopted or not. There is no controversy of whether or not this bill should eventually come to a vote. There is no controversy about what amendments should be offered. Hopefully, there is no controversy over how long we should discuss these amendments—a thorough discussion but with time limits—and eventually get this bill passed and get it to the conference committee. There Senator DURBIN and I are going to need a lot of time.

There is a tremendous difference between our bill and the House bill. Senator DURBIN and I need the rest of this session. And we hope that the rest of this session that we are talking about isn't October 1. We hope it is from this date of September 17 to the end of the session to work out the differences between the House and Senate. So that is why we want Members to come.

In the meantime, I say to Senator DURBIN, I thought I would —yes, let me yield to Senator DURBIN.

Mr. DURBIN. I note September 17 is an important date in the history of the world, because it is the birthday of the Senator from Iowa, and I think it is appropriate that we acknowledge that on the floor of the Senate, and also give him a great birthday gift by moving this bill along in an efficient manner.

Mr. GRASSLEY. Thank you.

Mr. DURBIN. I have called the Democratic Senators who have told me they have pending amendments and asked them to come to the floor as soon as

possible so that we can start the amendment consideration. There is one amendment which the Senator from Massachusetts, Senator KENNEDY, would like to offer relative to the minimum wage which does not relate directly to this bill, but there has been an agreement that he will have that opportunity. I think he will be here within an hour, and we can discuss exactly when that amendment might come up.

I just say, as I have said before on the floor, it has been a pleasure to work with Senator GRASSLEY and his staff. I think the way that we resolved over 30 amendments on this might be a good way to legislate. Because literally Senator GRASSLEY and I, with our able staff members, and people from the administration, sat in a room and worked through some 30 different amendments.

We now have pending about a dozen that were unresolved that we think should be the subject of floor votes. Once those have been voted on, we are prepared, I hope, with a good work product to move forward, to pass a bill, and move to conference to consider a very complicated and complex area of the law but one so critically important to over a million Americans each year who file for bankruptcy in the United States.

We want to make certain that we keep those bankruptcy courts available for those who have truly reached the end of the rope and have absolutely nowhere to turn; and that, I think, describes the vast majority of people who come to the bankruptcy court. But we also hope to tighten the procedures to eliminate those abuses, petitioners who come to court who should not, those who were in court and engaged in tactics that, frankly, we do not think should be acceptable.

We are also going to try to address in the course of the amendments to this bill questions relative to the whole offering of credit cards to Americans. I think virtually everyone here today can tell me that when they go home tonight and open up the mail, they are going to find another credit card solicitation—I see heads nodding in the gallery—if you are a normal American. And I am sure they are nodding at home as well.

We want to make sure that the credit that is offered in America is credit available to everyone. The democratization of credit in this country has been a positive thing. But we also want to say to those who offer credit: Do it in a responsible way. Be honest in terms of describing the credit arrangement that you are seeking. Be certain that the people you are dealing with are truly capable of incurring more debt and can get involved in this process with a clear understanding of their obligation. Make your monthly statements intelligible so people who pay a minimum monthly amount have some idea when it might come to an end. Disclose some peculiarities of credit. Am I taking a security interest every time I use my credit card—for the toaster I just purchased? All of these things, I think, are relevant and will be raised during the course of this.

One of the Senators is going to offer an amendment which basically says we can declare "time out." If we are tired of credit card solicitations, we ought to be able to call a number and tell them to cease and desist, stop bothering us with all these solicitations. I think there is a right in America to be left alone. One of the amendments that will be offered will address that particular issue.

I thank the Senator from Iowa. I am going to make some phone calls and encourage our colleagues to come to the floor quickly.

Mr. GRASSLEY. Mr. President, we probably have fewer Republican Members with amendments to offer, but I have also been on the phone to talk to those people, as well, to come to the floor to expedite this process. The Senate majority leader and Senator minority leader really want this bill to be passed.

As I said, we need a long time to conference—our bill is quite a bit different from the House bill—to work out the differences and get a bill to the President before we adjourn.

Mr. President, I would like to discuss several provisions of the consumer bankruptcy reform act which will greatly enhance the ability to collect child support from people who owe child support. When the Judiciary Committee marked-up the Consumer Bankruptcy Reform Act, I joined with Senators HATCH and KYL to add an amendment to the bill which would protect and enhance the status of child support claimants during bankruptcy proceedings.

The bill, which were reported out of the committee on a bipartisan vote of 16–2 now provides that child support obligations must be the first obligation paid during any bankruptcy proceeding. Under current law, child support is paid 7th so that often there just aren't funds available to pay to ex-spouses and children. I think that this bill will be tremendously helpful for those who are owed child support.

And the National district Attorneys Association agrees with me. This organization represents more than 7,000 local prosecutors throughout the United States, many of whom must enforce child support obligations under title IV–D of the Federal Social Security Act.

On September 2nd, 1998, NDAA President John R. Justice wrote me to express the association's belief that this legislation will "substantially assist" efforts to collect child support for the children and spouses of debtors who have filed for bankruptcy. This letter went on to note that association supports the act because S. 1301 contains "enormous enhancements to support collection remedies" and represents a "major improvement to the problems facing child support creditors in bankruptcy proceedings."

The reason it's important to put child support claimants at the top of the list during a bankruptcy proceeding is that most bankrupts don't have enough money to fully pay all their creditors. So, somebody's not going to be paid. This bill makes it more certain that child support will be paid in full before other creditors can collect a penny. That's real progress in making sure that children and former spouses are treated fairly.

Also, the amendment accepted by the committee provided that someone owed child support can enforce their obligations even against the exempt property of a bankruptcy. This means that wealthy bankrupts can't hide their assets in expensive homes or in pension funds as a way of stiffing their children or ex-spouse. This is another example of how this legislation will help, not hurt, child support claimants.

Outside the bankruptcy context, when there are delinquent child or spousal support obligations, State government agencies step in and try to collect the child support. S. 1301 exempts these collection efforts from the automatic stay. The "automatic stay" is a court injunction which automatically arises when anyone declares bankruptcy and it prevents creditors from collecting on their debts.

But, now, if this legislation passes, State agencies would be in a much better position to collect past due child support. In practical terms, this means State government agencies attempting to collect child support can garnish wages and suspend drivers licenses and professional licenses. Mr. President, clearly, this bill will help State governments catch deadbeats who want to use the bankruptcy system to get out of paying child support.

Taken together, these changes will significantly advance protection for child support claimants in the context of bankruptcy proceedings. This is why the National District Attorneys Association, an organization which represents many of the prosecutors who must enforce child support obligations, supports this bill. And these changes provide yet another compelling reason to support S. 1301.

Mr. GRAMM. Mr. President, I requested some morning business time. It is my understanding that our colleague from Minnesota came over and asked unanimous consent to speak as in morning business. I also had checked with our dear friend, the Senator from Iowa, about the possibility of doing the same. If I wouldn't be delaying the important business of the Senate, I ask unanimous consent to speak as in morning business for 15 minutes.

The PRESIDING OFFICER (Mr. HAGEL). Without objection, it is so ordered.

EMERGENCY APPROPRIATIONS AND THE SURPLUS

Mr. GRAMM. Mr. President, I wanted to express some concern about what is happening in terms of Federal spending this year; about the fact that now, for two weeks, we have not passed an appropriations bill; about the fact that it is clear from watching the process now that the minority, operating strictly within its rights, has held up the passage of any of the remaining appropriations bills by simply drowning these bills in riders and amendments.

We are beginning to hear talk, both in the administration and the Congress, about the need for a massive expansion in spending.

I decided earlier this week to sit down and look at all the proposals that have been made under the name of "emergency spending." That is important because, as my colleagues know—the public may not fully understand—while we have a binding budget, there is a gigantic loophole in that budget. That gigantic loophole is, if the President and the Congress agree to designate an expenditure "an emergency," it doesn't count.

Since President Clinton has been in office, we have had $31.5 billion worth of emergency spending. During election years, that level of emergency spending has ballooned to a whopping $8.6 billion per election year.

Now, in looking at where we are and in looking at the threats of vetoing appropriations bills if we don't appropriate as much money as the President has called for, I put together the following list of emergency requests that have been made by the President or have been discussed in the Congress.

The first is $2.9 billion for natural disasters. I remind my colleagues that we know at the beginning of every year that we are going to have disasters.

Now, we don't know exactly where they are going to be. We don't know whether they are going to be earthquakes in California, or hurricanes in Texas and South Carolina and North Carolina, or floods in the Dakotas. But we know, based on experience, that every year we are spending about $5 billion on disaster relief. But instead of putting the money in the budget so that it is there, instead of setting priorities, as any family would, what we do is wait until a disaster occurs and then we designate it as an emergency, so we can spend beyond our budget. In the President's own words as he stood before the Congress in the State of the Union Address, he said: "Save Social Security first, don't spend one penny of the surplus, and don't give any of it back in tax cuts."

But what we declare spending to be an emergency, it means that we are, in fact, spending the surplus and taking money away from Social Security.

Let me go over this list of what is now being called "emergencies." The next item on the list is the fact that we are about to enter a new century and a new millennium and, in the process, we are going to incur a computer problem called the "Y2K problem." In other words, the year 2000 is coming and we are entering a new millennium. Now, is that a surprise? Is anybody shocked that every day we get closer to the year 2000? Is it news to anybody that we have a potential computer problem in the Federal Government? Yet, while we have known about this—in fact, we have known from the beginning of the calendar of Julius Caesar that we were going to reach the year 2000. We have known it since the ancient Greeks. We certainly have known that we had this problem for the last 5 or 6 years. Yet, suddenly, we have a proposal saying that there is an emergency, the year 2000 is coming and there is going to be a new millennium, so the Federal Government needs an additional $3.25 billion to $5.4 billion. How can anybody say that that is an emergency if it is obviously a problem we knew we would have to face? It is something that we are going to have to face in the year 2000. But why should it not be dealt with within the context of the ordinary budget?

Now we hear talk of emergency funding for the census. We are required by the Constitution to do a census every 10 years. Surely it doesn't come as a shock to anybody that we have known since 1787 that we are going to make preparations for doing a census in the year 2000. Yet, there it is, as if somehow there is an emergency in that suddenly we have realized that we have been grossly underfunding the census in order to fund other programs, and now we have a funding problem in the census. But is that a shock or an emergency? I would say no.

Suddenly it has been realized that all these cuts we have made in defense are having a detrimental impact on defense. That hardly comes as a shock to me, since I and others have spoken out for the last 10 years about the level of cuts in defense readiness. But now we are looking at a potential emergency supplemental appropriation for defense readiness of between $3 billion and $4 billion this year.

Now the shock of all shocks: We have troops in Bosnia. You would think that as long as we have had troops in Bosnia, the President would have put in his budget this year funding for the troops in Bosnia. But what is going to happen in the next 3 weeks is that we are suddenly going to be awakened to the fact that we have troops in Bosnia and the President wants an additional $1.9 billion of funding that will be designated as an "emergency." I submit that it is no emergency that we have troops in Bosnia. I submit that it is not a shock that we have troops in Bosnia. Everybody knows we have troops in Bosnia, and everyone has known we have troops in Bosnia. Yet, we are looking at an emergency supplemental to fund it.

We are also seeing requests—our Democrat colleagues have proposed busting the budget by $7 billion to help agriculture. Others on my side of the aisle are talking about $2.7 billion to $3 billion or more. The bottom line is this. When you add it all up, we now have serious discussion at the White House and in the Congress about raising the total level of spending this year by almost $20 billion. That is $20 billion that we may spend over the level of the budget that we set out just last year.

I simply want to make several points. First of all, I have, because of the work I have done on Social Security, concluded that we would be well advised not to create any new spending and not adopt a tax cut until we have taken action to fix Social Security. And it is my hope that we can fix Social Security early next year, and the funds that are not required in the surplus to fix Social Security could be given back to the taxpayer in the form of substantial tax cuts.

My problem is that, having concluded that it would be best to hold the money in the surplus to fix Social Security first, I now see the specter of the Congress and the President spending that money. I want to remind my colleagues that for the $20 billion of "emergency spending" that we are looking at this year, we could repeal the marriage penalty; we could give full deductibility for health insurance to all Americans who either don't get it provided by their employer or are self-employed; we could provide a change in the Tax Code so that farmers could income average and better shield themselves against the kinds of fluctuations in agriculture income that we have; we could repeal the earnings test under Social Security. All of those things would cost less as a tax cut than the money we are talking about spending on an "emergency basis."

So I want to conclude by making the following points. No. 1, I intend to resist these emergency spending items. If somebody wants to sit down and come up with a real emergency, I am willing to look at it. But if we are talking about this kind of spending where we knew it was coming but decided to call it an emergency—and I now understand that the President is considering designating research and education spending as an emergency—if we are talking about this level of spending, I intend to resist, and we are going to have to have 60 votes in the Senate if this kind of spending is to occur.

Secondly, I have been among those who have publicly stated that we should set aside the budget surplus this

year, not spend the money, not give it back in tax cuts, until we fix Social Security. But if the other side decides that we are now suddenly going to start spending massive amounts of money, I would much rather give it back to working Americans by cutting their taxes than to see the Federal Government spend it, although my first choice is to save the money for Social Security. I remind my colleagues that the tax burden on working families in America at the Federal, State, and local levels is at the highest level in American history.

So my two points are: No. 1, I intend to resist this effort to begin a massive spending spree, the likes of which we have not seen in a decade. No. 2, if this effort continues to have the government spend the surplus, the argument that we must wait to do tax cuts is over. If we are going to see one group in Congress try to spend the surplus, while asking those of us who believe it should be safe for Social Security but who also believe that giving it back to the taxpayer is a much higher and better use than seeing the Government spend it, then that argument is over.

So I wanted to alert my colleagues to this problem. I hope that we can serve the public better than we would be if we simply ignite a new spending spree, because for the first time since 1969 we have a surplus.

I think that is wrongheaded policy.

Let me say also to the threats that the administration might veto appropriations bills if we don't spend enough money that I think the Congress should stay in session, pass appropriations bills at reasonable and responsible levels, and, if the President wants to veto them, let him veto them. And then we can be here and we can pass them again; then pass them again, pass them again. I believe at some point that the public would awaken to the fact that this is a debate about how much money is being spent, and thats what we are seeing here is a very subtle blackmail where the administration says, "If you do not spend more money, I am going to veto bills, and I am going to shut down the Government."

I believe, if we will stand our ground on fiscal principle, if we will save the surplus for Social Security, that we will serve the public interest well. But, if the money is going to be spent—if that is the alternative—then I would much rather move ahead with a major tax cut and give the money back to the American worker than to see the Government spend it.

I yield the floor.

Mr. GRASSLEY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONSUMER BANKRUPTCY REFORM ACT OF 1998

The Senate continued with the consideration of the bill.

UNANIMOUS CONSENT AGREEMENT

Mr. GRASSLEY. Mr. President, for our majority leader, I make this request: I ask unanimous consent that pursuant to the consent agreement of September 11, at 10:30 a.m. on Tuesday, September 22, the Senate resume S. 1301, and Senator KENNEDY be immediately recognized to offer his amendment relative to the minimum wage. I further ask that at 2:15 on Tuesday there be 5 minutes equally divided, to be followed by the vote on the motion to table that amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REED. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ROBERTS). Without objection, it is so ordered.

Mr. REED. Mr. President, I also ask unanimous consent to lay aside the pending managers' amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3596 TO AMENDMENT NO. 3559

(Purpose: To prohibit creditors from terminating or refusing to renew an extension of credit because the consumer did not incur finance charges)

Mr. REED. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. REED] proposes an amendment numbered 3596 to amendment No. 3559.

Mr. REED. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in title IV, insert the following:

SEC. 4 . PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

Section 106 of the Truth in Lending Act (15 U.S.C. 1605) is amended by adding at the end the following:

"(g) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor may not, solely because a consumer has not incurred finance charges in connection with an extension of credit—

"(1) refuse to renew or continue to offer the extension of credit to that consumer; or

"(2) charge a fee to that consumer in lieu of a finance charge.".

Mr. REED. Mr. President, my amendment would prohibit credit card companies from terminating a customer's account or imposing a penalty solely because the customer pays his or her bill on time and in full each month. It seems amazing but there are actually some companies out there that will terminate credit because the borrower, the debtor, pays the full amount each and every month on time.

This amendment is narrowly tailored and would not otherwise affect the ability of the credit card company to terminate accounts or charge any fees or do anything with respect to penalties, but it would restrict and, indeed, eliminate this practice of terminating the best creditors that they have simply because they are not making any money on finance charges.

I am offering this amendment in response to this very troubling practice which finds many credit card companies discriminating against the most responsible borrowers, those who pay their balances on time each and every month. Specifically, several companies have started to terminate a customer's card or impose a penalty if the customer pays his or her credit card bill in full each month.

For example, in my home State of Rhode Island, many consumers with a credit card issued by a popular national discount store were alarmed to receive letters which stated:

Our records indicate this account has had no finance charges assessed in the last 12 months. Unfortunately, the expense incurred by our company to maintain and service your account has become prohibitive, and as a result, in accordance with the terms of your cardholder agreement, we are not reissuing your credit card.

One couple who received this letter has been married for 49 years and had never been late on any mortgage payment or denied any loan or been late in any type of credit arrangement that they had. Yet, with this note, the company was informing them that they were effectively being denied credit solely because they were responsible borrowers.

Now, the message from credit card companies in this case is if you are too good a risk we won't give you any credit. That is illogical and, I think, should not be the practice of these companies. In fact, this practice is contrary to the goals of S. 1301, which is to promote responsible borrowing practices and reward those who are responsible in their borrowing practices. By penalizing borrowers who pay off their bills each month, it seems that some credit card companies are, in fact, advocating the type of behavior which S. 1301 is designed to discourage.

I am not moved by the claims of these companies that say they need to cancel accounts which do not incur financial charges because the cost of servicing these accounts is prohibitive. Industry data suggests it costs issuers

about $25 annually to service an account. But issuers are able to offset this cost through an interchange fee of approximately 2 percent charged to merchants on each transaction. Each year, on average, $3,000 is charged to a credit card. This 2-percent interchange fee on these charges equals about $60 which would seem to more than cover the cost of these accounts. Moreover, with Americans holding over $450 billion in consumer debt and with an average interest rate on credit card balances at 17.7 percent, the overall profitability of credit card lending is obvious and apparent.

This amendment is a narrowly crafted measure which is designed to prohibit credit card companies from discriminating against the most responsible borrowers. For this reason, the amendment would clearly advance the goals of S. 1301 to promote more responsible credit card practices.

I see no reason why my colleagues would oppose it. I therefore ask my colleagues to support this amendment. At the appropriate time I will ask for the yeas and nays.

I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Iowa is recognized.

Mr. GRASSLEY. First of all, because we have about 12 amendments pending on this bill, I want to thank the Senator from Rhode Island for coming over here and helping to expedite the process of the Senate on a very important bill. I thank Senator REED for coming over and doing that.

Having said that, knowing the personality of the Senator from Rhode Island, that he is very sincere about his position and very sincere in determining that this is a problem to needs to be dealt with, I suggest there are two issues relating to this amendment. One would be the immediate issue of whether or not it is needed; second, the extent to which this really falls in the jurisdiction of the Senate Banking Committee.

I don't find fault with the Senator from Rhode Island offering this amendment to my bill, but a reason for my opposition is that I do not like to usurp the authority of other committees.

I think experience has shown that price controls, as indicated in this amendment, are counterproductive. In the end they are very harmful to the people they are trying to help, particularly the consumer, and in addition to that, somewhat harmful to the general economy.

I feel this amendment should be opposed. This amendment has the destabilizing effect of imposing price controls on credit card lenders by prohibiting the imposition of a fee or canceling the account of an account holder because the account has not incurred financial charges.

The credit card industry is extraordinarily competitive. People might not realize it—on the other hand, they might realize it because they get so many of these solicitations—but in the banking industry alone, there are 6,000 credit card issuers. They are all in competition, competing with each other for new credit card holders. Everybody here on the Senate floor right now is in somebody's computer and in a few days they will get some sort of a solicitation. That is how competitive it is. Whether that is right or wrong is another thing, but the competitive environment makes that determination.

This intense competition provides consumers with enormous benefits. For instance, it has resulted in a decline of the average credit card interest rate in the past several years. Just as important, the competition results in industry choice for the consumer. As I said, consumers can choose from literally thousands of different cards, each with a different array of pricing and benefit features.

As a result, the extraordinarily competitive environment in which credit card issuers operate, consumer credit actually dictates credit card prices much more efficiently than we can do through almost any Federal law. Any lender who offers undesirable pricing features will swiftly fall behind the competition because the consumers can and will choose other products. By contrast, this amendment would harm consumers by restricting consumer choice.

In addition, we have a record going back to 1991 when another Senator—still a Member of this body—tried to impose price controls on lenders and it precipitated a severely negative impact on the stock market. For example, in 1991, when the Senate opposed price controls on credit card lenders in the form of an interest rate ceiling, the stock market reacted, dropping 120 points in a single day. Clearly, in this time of already volatile market activity, we don't want to repeat things of that nature. I am not suggesting that would be what would happen in the case of the amendment that is before the Senate, but, obviously, we should be very cautious.

Now, probably a more important point for Members to consider in supporting or not supporting this amendment would be, as I said, whether it is in the jurisdiction of the Senate Banking Committee. We have the Senator from North Carolina, Mr. FAIRCLOTH, chairing the Subcommittee on Financial Institutions of the Banking Committee. He has indicated to me that he will hold hearings on credit card solicitation practices and also on lending practices.

I know many Members feel the credit card companies have been sloppy and overly aggressive in the way they offer credit. I say there is substance to that argument. That is why I have appreciated my comanager of this bill, Senator DURBIN, bringing this to our attention as part of this legislation. I think it has been amply discussed, and I share some of those concerns as well. I do think it is more appropriate for the committee of jurisdiction to do that. I am certainly not here to tell Members that credit card companies have been totally responsible in the way that they offer credit. But the fact is that these are issues which need to be explored by the authorizing standing committee and its subcommittee.

The amendment of the Senator from Rhode Island is a Banking Committee issue. We happen to have before the Senate a bankruptcy bill which came out of the Judiciary Committee where we don't have the expertise that we ought to have on this issue. I would like to follow the regular order of the Senate and let the subcommittee with real expertise examine this.

I have a letter from Senator FAIRCLOTH that I wish the Senator from Rhode Island would consider. It is addressed to me.

It is my understanding that a number of amendments relating to credit cards will be offered to S. 1301. Most, if not all, of these amendments will relate to matters in the jurisdiction of the Banking Committee. I Chair the Financial Institutions Subcommittee of the Banking Committee.

I share the concerns that many have regarding multiple credit card solicitations and solicitations to minors. In fact earlier this year, my Subcommittee held a hearing on bankruptcy issues, with representatives of the credit card industry testifying. I have requested and received GAO reports on such practices as high loan to value loans and the sending of "live" loan checks.

As for many of the proposed amendments relating, however, none have been passed by the Committee. In fact, none have been considered by the Committee. Further, none of the proponents of the amendments have requested hearings on any of their legislative proposals.

During consideration of the bankruptcy bill, please know that I would be more than willing to hold a hearing or hearings on any of these proposals in my Subcommittee where they rightfully should be considered under regular order.

Sincerely,

LAUCH FAIRCLOTH,
Chairman,
Subcommittee on Financial Institutions.

I give that to my colleagues for consideration. Again, I thank the Senator from Rhode Island for coming.

I yield the floor.

Mr. REED addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I thank the Senator from Iowa for his comments and for his leadership, along with our colleague from Illinois, Senator DURBIN. I have a few comments in response to his very thoughtful commentary.

First, the jurisdiction of the committee when it gets to the floor, it has been my limited experience, is somewhat fluid. In fact, in this bill we are amending the Truth in Lending Act,

which has ramifications in both the Judiciary Committee and the Banking Committee. I think, to be very scrupulous about jurisdictional responsibilities here, we missed the opportunity to do something which most of our colleagues, I hope, would recognize is an appropriate thing to do—preventing the termination of credit to people who simply pay their bills on time.

The second aspect of this debate, which I think is appropriate to have in this bill, is that the driving force for this legislation comes very powerfully from the credit card industry. They are concerned that many individual consumers seek bankruptcy because of their huge credit card debts, and they feel that they are currently disadvantaged with the present system. So, again, I don't think it is inappropriate as we look at this bankruptcy system and, in many respects, test the credit card industry and look at some of their practices. This practice is particularly disturbing—again, that somebody's credit would be terminated simply because they paid on time.

Another aspect that the Senator from Iowa mentioned was the suggestion that this is, in some way, price controls. I think that is a very, very long stretch—to look at this amendment which says you can't terminate an individual because they pay on time—that is a far cry from imposing limits on how much could be charged in terms of fees, penalties; and, clearly, I make no attempt to do that. I would never suggest that we do that in this amendment. I point out that in fact there are existing situations, in State law certainly, usury statutes, which do impose fees and caps on what a credit card company can charge. That is not the intent nor the specificity of this amendment.

This simply says that it should not be permissible for a company to terminate an individual who has paid promptly, solely for the fact that that individual has paid promptly. If the individual is in arrears, if the individual has done something else to violate the agreement, then that is grounds, but not prompt payment; that should not be grounds.

Ultimately, let me get back to the initial point I made. At the heart of this legislation—and, again, the Senator from Iowa and his colleagues have done much to make sure this was at the core—was to try to reinstill a sense of responsibility among borrowers that we will not tolerate people who game the system, who use bankruptcy as a shield for their irresponsibility. To me, it is extremely ironic that we would be talking about a situation here where I am attempting to recognize and protect the continued extension of credit to the most responsible borrowers we have in the country, the ones who pay on time every month and don't use this system to be irresponsible.

So I hope my colleagues can recognize the merits within this particular amendment and support it.

On a final point, I note that today is the birthday of the Senator from Iowa. I thank you for working overtime on your birthday on this measure, Senator.

I yield the floor.

Mr. GRASSLEY. I thank the Senator.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. REED. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REED. Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The yeas and nays were ordered.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Iowa.

Mr. GRASSLEY. I ask unanimous consent that at 12 noon today the Senate proceed to a vote on or in relation to the Reed amendment number 3596. I further ask that at 11:55 there be 5 minutes for debate equally divided.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. GRASSLEY. I yield the floor.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I rise in support of the amendment offered by the Senator from Rhode Island.

Recently, some credit card issuers have started to discriminate against people who pay off their account balances each month, and, therefore, don't incur finance charges for the credit card purchases. These issuers charge such customers a monthly fee, or they actually terminate the customer's account.

The Reed amendment would prohibit credit card issuers from charging a fee, or terminating an account based solely on the customer's failure to go into debt to incur finance charges.

Let me tell you why I think this is a good idea.

Industry experts have concluded that many issuers of these cards have been actively discouraging consumers from paying off balances by lowering their monthly minimum payments, and, in some cases, requiring as little as 2 percent of the balance on their credit card debt each month. Think of how long it would take to pay off your credit card under such circumstances. At such a rate, it could take 34 years, in fact, to pay off a $2,500 credit card balance, with payments totalling 300 percent of the original principal.

In fact, about 40 percent of American credit card holders pay their balances in full each month, thus incurring no interest charges. Such "convenience users" are considered freeloaders by these credit card companies—even deadbeats. They want people to go into debt. They want us to pay finance charges as much as possible every single month. Some credit card companies charge annual fees and other techniques to discourage this type of credit card use.

I think the amendment offered by the Senator from Rhode Island is a good one. I will support it on the floor. I believe that the credit card companies should understand that if some people are unable to make their monthly payments, and thus, incur additional expenses, so, too, there are people who really do pay off their debts as they are incurred, and in so doing these people should not be penalized.

I yield the remainder of my time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The distinguished Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent to speak out of order.

The PRESIDING OFFICER. Is there an objection? Without objection, it is so ordered.

211TH ANNIVERSARY OF THE SIGNING OF THE CONSTITUTION

Mr. BYRD. Mr. President, as I look about at my distinguished colleagues seated in the august Senate chamber, I find myself mentally transported to another gathering of distinguished leaders, in another elegant chamber, that occurred exactly two hundred and eleven years ago today.

The date was Monday, September 17; the setting, the Philadelphia State House. It had been a long, hot summer, and only 38 of the 55 delegates attending the Constitutional Convention were still in attendance. One can imagine the commingled sense of pride, nervous excitement, and exhaustion that filled these men as they filed into the State House chamber and took their seats. For awaiting them that day was a task that they must have eagerly anticipated for several months—and that many of them feared might never arrive. It was to be the fruition of their diligent, patient, frustrating summer of debate, discussion, and dispute. Finally, they would put their signatures to the document, freshly copied on

parchment in neat script, that they had spent the summer composing. And so it was that, after a protracted and at times painful labor, on September 17, 1787, the Constitution was signed. Today, this document, little changed since its creation in Philadelphia, celebrates its 211th birthday.

Before the signing ceremony took place, Benjamin Franklin rose to speak one last time to his colleagues. Some of them still had reservations about the document that the Convention had drafted, and Franklin, as he had so often that summer, used his customary self-deprecating charm and understated wisdom to try to win them over. Acknowledging that the draft Constitution might well contain some "faults," Franklin added, however:

I doubt too whether any other Convention we can obtain may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an Assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does; and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel. . . .

Mr. President, I, too, continue to be astonished at the perfection of this document. The more I study it, the more I see it in action—as we all do here, on a daily basis—the more I marvel at the handiwork of those 55 men in Philadelphia. What transpired that summer in Philadelphia's State House was truly one of the great events in the history of this Republic—it is not a democracy; it is a Republic—or in the history of the world. Indeed, it is no stretch to call this Constitution, as Gladstone did, "the most wonderful work ever struck off at a given time by the brain and purpose of man."

Part of the strength of the Constitution lies in its ability to accommodate situations and developments that the Framers could never have anticipated. Just as Seneca tells us that the test of a strong man is adversity, so the true test of the Constitution may be how well it handles the unexpected. So far, Mr. President, the Constitution has passed that test with flying colors. It has seen us through two centuries of staggering technological, economic, social, and political transformations.

We may well be entering a new period of upheaval which will further test the Constitution's strength and elasticity. Some have even suggested that we are entering "a constitutional crisis." I, for one, have greater faith in the Framers' handiwork. The Constitution sets up a clear process for investigating and resolving allegations of wrongdoing by the Executive and other civil officers. The House is assigned the power of impeachment and the Senate the power to try impeachments. The current situation may well not result in impeachment, but if it does—and that is just one possibility—then I am confident that, as long as we in the House and the Senate fulfill our constitutional duties solemnly and judiciously, we will see the nation through this and any future difficulties.

Sadly, just as current events reaffirm the importance of knowing and following constitutional processes and procedures, a new poll indicates that America's youth are largely ignorant of the Constitution and its origins. It seems that every few months a new poll appears which plumbs the depths of ignorance among some of our children. Each time, we hope that we have finally reached the bottom of the abyss; each time, we are disappointed when a new survey a little later indicates that the depths are deeper and darker than we ever realized.

The latest sounding of the depths comes to us through the courtesy of a poll by the National Constitution Center, which shows that while American teenagers are Rhodes Scholars in popular culture, in many instances many are sadly deficient in matters constitutional. The study found that by a wide margin, 59 percent to 41 percent, more American teenagers can name the Three Stooges than can name the three branches of government. Less than 3 percent of teens could name the Chief Justice of the Supreme Court, while almost 95 percent could name the television actor who played the "Fresh Prince of Bel-Air." And less than one-third could name the Speaker of the House, while almost 9 of 10 could name the star of the T.V. show "Home Improvement."

It gets worse, Mr. President. Why, just one-quarter of the teens could name the city in which the Constitution was written! Only one-quarter knew what the 5th Amendment protects. Only 21% knew how many Senators there are. And less than half knew the name given to the first ten amendments.

These should not be difficult questions to answer. This is not a matter of knowing whether the Constitution allows states to grant letters of Marque and Reprisal—it doesn't—or citing cases over which the Supreme Court has original, rather than appellate, jurisdiction. One should not need a degree in constitutional history, or a course in constitutional law, to know the name of the Speaker of the House. Indeed, answering many of the questions I cited requires only a cursory familiarity with current events. What's more, over half of the teens interviewed said they read or listen to the news for at least 15 minutes daily, over half said their teachers discuss politics at least a few times a week, and yet, only a handful could recall the names of Newt Gingrich or William Rehnquist.

Where does the fault lie, Mr. President? With our schools, for failing to provide students with the most rudimentary background in civics and government? With the media, for its shallow and trivializing coverage of important issues? Or with parents, for failing to prepare their children for their responsibilities as citizens? With the entire national culture, for placing greater emphasis on the fashion tips of supermodels and the escapades of rock stars than on the accomplishments and heroics of great men and women of the past and present?

Perhaps all of these entities must share some responsibility for this sad state of affairs. But my purpose today, Mr. President, is not to cast blame. I speak not in anger but in sadness, out of a concern for the welfare of our country and the future generations which will assume its leadership. This country will not long continue to occupy its unique position among the nations of the world if it does not adequately prepare its children to pick up the reins of power that the older generations currently wield. We need to prepare our children to be active, informed, involved citizens. We need to make them aware of how our governmental system operates and what part they play within it. We need, in short, to teach them about the Constitution.

For it is the Constitution that lays out the Federal system of government. It is the Constitution that establishes the separation of certain powers and the sharing of other powers among three distinct but overlapping branches of government, and between one Federal and multiple State governments. The Constitution is the secular bible of this Republic, and, given its importance, its brevity, and its accessibility, it is not too much to expect that every citizen have at least a passing familiarity with it.

Even this is not enough, however. The Constitution, as I suggested at the beginning, is the product of a particularly momentous course of events. Simply reading the words of the Constitution without knowing something of those events is like learning about World War I by reading the Treaty of Versailles. We cannot teach our children to understand and respect this document unless they learn its history. They must learn about the considerable intellectual and physical energy that those 55 men at Philadelphia expended in drafting this document. They should read some of those debates, and they should read The Federalist Papers and discover for themselves the principles, hopes, and fears that motivated the Framers.

For the Constitution was not simply handed down to us as the Old Testament God handed down the Commandments to Moses. To believe that would

be a disservice to the remarkable men who toiled long and hard to produce the document. The Constitution is our tangible connection with those men, and with the founding events of this Republic some two centuries ago.

So, I close where I began: with 38 men gathered in a room at the Philadelphia State House some 211 years ago. While they may not have fully appreciated the moment of the occasion—how could they?—they had some inkling of it. And, of course, it was Franklin again who best captured the spirit of the moment. Gazing at the back of the President's chair, upon which the sun had been painted, Franklin commented:

I have often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness to know that it is a rising and not a setting Sun.

Today, 211 years later, that sun continues to be in the ascendant. I hope and pray that it will remain so for another 211 years.

CONSUMER BANKRUPTCY REFORM ACT OF 1998

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3596

The PRESIDING OFFICER. Under the previous order, there will now be 5 minutes of debate equally divided on the Reed amendment, No. 3596. Who yields time? The distinguished Senator from Rhode Island.

Mr. REED. Mr. President, I yield myself such time as I may consume.

The PRESIDING OFFICER. The Senator is recognized.

Mr. REED. Mr. President, this amendment is a very straightforward one. It would prohibit credit card companies from penalizing or terminating customers who pay their bills on time.

The core principle of this bankruptcy legislation that we are debating today is responsible borrowing, and being responsible for your debts. Here, we have a population of the most responsible borrowers, those who pay their bills timely and full each and every month. But what is happening is that there is a growing movement among credit card companies to penalize these individuals or to terminate their credit arrangements. I think it is wrong and I think we should do something about it here today.

The credit card industry claims it is too expensive to maintain these accounts. Frankly, if you look at the charges that they receive from merchants on each transaction, the very substantial interest rate that they charge for outstanding balances, and also the membership fees which now seem to be ubiquitous, those claims seem to be very hollow. Indeed, this should be an issue about not only responsibility but fairness, and also about whether we really do believe that if people conduct their lives appropriately, pay their bills on time, are responsible, that they should end up being penalized.

If we are talking, today, in this legislation, about responsible borrowing, how can we allow the most responsible borrowers in our society, ones who pay their bills each and every month, to be punished by these credit card companies?

I urge adoption of this amendment. I retain the remainder of my time.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I consume.

We have the chairman of the appropriate subcommittee willing to work with Senator REED to address this problem in the Banking Committee. My opposition to this is not so much a matter of substance but of procedure and not usurping the authority of that committee. It does need to be studied. I can tell you that in the Grassley-Durbin amendment, we have enhanced disclosure requirements to help consumers.

While I respect the Senator's view on price controls, my view is that forcing a credit card company to offer credit when it has made a business determination that it would lose money will only force increased prices on other consumers. This is something that the Banking Committee needs to take a very serious look at and do it before we do something that may help some but may also hurt others.

Mr. President, I am going to ask that this amendment be tabled after the Senator from Alabama speaks. I yield my remaining time to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama has 1 minute 58 seconds.

Mr. SESSIONS. Thank you, Mr. President.

The effect of this will be to require mandatory lending at no possible profit for a credit card company. We have 6,000 credit card issuers today. They are all providing different services; some charge a fee and you have to pay monthly, others don't. It is just not right for us, without a hearing, to even impose on a credit card company a duty to lend money in a way in which they will never be able to make a return.

I don't think we need to be entering into wage-and-price controls. We have a very vigorous free market, and, for the first time, interest rates are beginning to come down because we do have a lot of credit card companies competing out there. I think we ought not to intervene at this time. This is an unwise amendment. I understand the motivation behind it. It is not appropriate, and I oppose it strongly at this time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Forty-nine seconds.

Mr. REED. Thank you, Mr. President.

The credit card companies make a great deal of money even on those individuals who pay their bills on time. They have membership fees, fees from merchants when the transaction is processed, and they have additional ways to acquire fees.

I do not think it is a question of forcing an enterprise to give money away. What it is is a situation in which the credit card companies have come to us and said, "There are all these irresponsible borrowers out there; we have to amend the bankruptcy laws so we are protected." Yet, when we point out they are punishing responsible borrowers, they rise up and say, "That is an imposition on us."

If we believe in responsible borrowing, we should support this amendment.

I yield back my time.

Mr. GRASSLEY. I move to table the amendment.

The PRESIDING OFFICER. All time has expired.

Mr. GRASSLEY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table amendment No. 3595, offered by the Senator from Rhode Island, Mr. REED. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from South Carolina (Mr. HOLLINGS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 52, as follows:

[Rollcall Vote No. 273 Leg.]

YEAS—47

Abraham	Enzi	Kyl
Allard	Faircloth	Lott
Ashcroft	Frist	Lugar
Bennett	Gorton	Mack
Brownback	Gramm	McCain
Burns	Grams	McConnell
Chafee	Grassley	Nickles
Coats	Gregg	Roberts
Cochran	Hagel	Santorum
Collins	Hatch	Sessions
Coverdell	Helms	Shelby
Craig	Hutchinson	Smith (NH)
DeWine	Inhofe	Smith (OR)
Domenici	Kempthorne	

Snowe	Thomas	Thurmond
Stevens	Thompson	Warner

NAYS—52

Akaka	Feingold	Lieberman
Baucus	Feinstein	Mikulski
Biden	Ford	Moseley-Braun
Bingaman	Glenn	Moynihan
Bond	Graham	Murkowski
Boxer	Harkin	Murray
Breaux	Hutchison	Reed
Bryan	Inouye	Reid
Bumpers	Jeffords	Robb
Byrd	Johnson	Rockefeller
Campbell	Kennedy	Roth
Cleland	Kerrey	Sarbanes
Conrad	Kerry	Specter
D'Amato	Kohl	Torricelli
Daschle	Landrieu	Wellstone
Dodd	Lautenberg	Wyden
Dorgan	Leahy	
Durbin	Levin	

NOT VOTING—1

Hollings

The motion to lay on the table the amendment (No. 3596) was rejected.

Mr. REED. I ask unanimous consent to vitiate the yeas and nays on the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment (No. 3596) was agreed to.

Mr. REED. Mr. President, I move to reconsider the vote.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GRASSLEY. I ask unanimous consent we now move to the D'Amato amendment, regarding ATMs.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. As soon as this is disposed of—which we don't think will take very long—we will move to the Dodd amendment.

The PRESIDING OFFICER. Will the Senator restate his unanimous consent request.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that we now move to the consideration of Senator D'AMATO's amendment to the bankruptcy bill, and immediately upon disposing of that, which we hope to do fairly shortly, we move then to the Dodd amendment, and we would have 40 minutes on the Dodd amendment, evenly divided.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Reserving the right to object, and to inquire of the managing Member, there would be no second-degree amendments.

Mr. GRASSLEY. That is in the agreement. We have to certify which amendment it is.

Mr. DODD. Mr. President, I notify the managing Member that it is the amendment on the credit card age limit.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Reserving the right to object, is there going to be a time limitation on the D'Amato amendment?

Mr. GRASSLEY. We felt that Senator D'AMATO would offer his amendment, and then I will move to table.

Mr. DURBIN. Is there a time limitation?

Mr. GRASSLEY. There is not.

Mr. DURBIN. Mr. President, reserving the right to object, we are supposed to conclude by 2 p.m. to take up another matter.

Mr. GRASSLEY. I ask unanimous consent that we have 15 minutes for the D'Amato amendment and 5, which probably won't be used, by the opposition prior to the motion to table.

Mr. DODD. Reserving the right to object, I would like 2 or 3 minutes on the D'Amato amendment.

Mr. GRASSLEY. I will give the Senator my time.

Mr. D'AMATO. Mr. President, I ask unanimous consent that we have 20 minutes for the proponents. I have a number of people who would like to speak. It is an important amendment and one we have tried to have considered by the full body. Then if the opposition wants 5 minutes, that is fine. That would still keep it under a half hour.

Mr. GRASSLEY. Mr. President, that is OK—with a motion to table at the end of the time.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from New York is recognized.

AMENDMENT NO. 3597 TO AMENDMENT NO. 3559

(Purpose: To amend the Electronic Fund Transfer Act to limit fees charged by financial institutions for the use of automatic teller machines, and for other purposes)

Mr. D'AMATO. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO], for himself, Mr. CHAFEE, Mr. DODD, Mr. BRYAN and Ms. MOSELEY-BRAUN, proposes an amendment numbered 3597 to amendment No. 3559.

Mr. D'AMATO. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. ___. PROHIBITION OF CERTAIN ATM FEES.

(a) DEFINITION.—Section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a) is amended—

(1) in paragraph (10), by striking "and" at the end;

(2) in paragraph (11), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(12) the term 'electronic terminal surcharge' means a transaction fee assessed by a financial institution that is the owner or operator of the electronic terminal; and

"(13) the term 'electronic banking network' means a communications system linking financial institutions through electronic terminals.".

(b) CERTAIN FEES PROHIBITED.—Section 905 of the Electronic Fund Transfer Act (12 U.S.C. 1693c) is amended by adding at the end the following new subsection:

"(d) LIMITATION ON FEES.—With respect to a transaction conducted at an electronic terminal, an electronic terminal surcharge may not be assessed against a consumer if the transaction—

"(1) does not relate to or affect an account held by the consumer with the financial institution that is the owner or operator of the electronic terminal; and

"(2) is conducted through a national or regional electronic banking network.".

Mr. D'AMATO. Mr. President, this amendment would end the monopolistic, anticonsumer, anticompetitive practice of ATM double charges once and for all. It is cosponsored by Senators CHAFEE, DODD, HARKIN, BRYAN, and MOSELEY-BRAUN.

The amendment corresponds to my bill, S. 885, called the Fair ATM Fees for Consumers Act, which currently has 11 cosponsors. It would amend section 903 of the Electronic Fund Transfer Act to prohibit ATM surcharges imposed by ATM operators directly upon noncustomers using their machines.

The big banks would have you believe that if this amendment passes, ATMs are going to disappear. Absolute nonsense. Hogwash. It is simply not true. If they get rid of ATMs, then they are going to have to open up more branches and hire more people, and it is going to cost banks more money. Well, a transaction performed by a teller at a bank branch does cost more money.

Let's take a look at the genesis of the ATMs. When they were initially introduced to the consumer, great promises were made. Indeed, the banking community, I believe, had the support of just about everybody, including consumer groups, when they said: Look, we're moving into the modern era and the utilization of ATMs will save consumers money, it will reduce transactional costs.

Those benefits, indeed, were supposed to be passed on to the consumer. It made sense. Indeed, a network was set up—a network owned by Cirrus and Plus, really owned by the large money center banks. Interestingly, in order to induce others who may have started rival networks, they said: Don't worry, use our network, use the ATMs that we establish, because we will prohibit a double charge, a surcharge on top of an initial fee. So, therefore, those who might go into competition, such as the credit unions, the small community banks, and others, do not have to go through the cost and expense of setting up your own ATMs, because we will let your customers use our ATMs without any additional charge.

Indeed, up until April 1, 1996, the networks prohibited double charges. That was a self-imposition to see to it that all of the financial services that were offered in the banking community would be available, there would be one charge that the consumer's own bank could impose and pass along the money to the ATM operator. The bank would be compensated, but there would not be any additional charge for those who used an ATM that was not their bank's.

Let me say that the Congressional Budget Office reported that there were more than 122,000 ATMs in the United States before double charges were permitted nationwide. So this rubric, this nonsense, this incredible claim that, "Oh, we are concerned about consumers and their choices, and we're concerned that they won't have these ATMs," that is just a lot of nonsense. Look at the facts—122,000 of the existing ATMs, or 74 percent, were in place before double charges.

Now, at last count, there were 165,000 ATMs. So in the past 2 years, you have had approximately 43,000 new machines come into use. That means that 74 percent—three-quarters of all the ATMs in the United States—were in place before they were allowed to double charge.

Now, under the amendment, which has been cosponsored by many of my colleagues, ATMs would still be profitable. They have been raking in huge profits.

The banks were saving money because they saved a dollar for each transaction performed at an ATM rather than at a bank branch—and they made a profit on the use of the ATMs. But they weren't satisfied with that. Oh, no. They had to say that: On top of that, we are now going to add another charge. Guess what we are going to tell the consumer? A little flag goes up and says you will pay $1.25 more.

What is a person who, at lunchtime, has to take out $20, $30, or $40 supposed to do? Go running around looking for an ATM that doesn't have a double charge? No. The people are stuck. They are running late, or maybe it is getting dark. Are you going to go searching for an ATM that doesn't have that little flag going up? Or are they going to look for one that doesn't exist, because their bank, under the inducement years ago that they need not participate and open up their own ATMs, they said, "We will rely on the network rather than try to find that mythical one"?

If you tried to find one in Washington, DC, you would not find one. Ninety percent of them in this region double charge. If you don't go to the institution where you do your banking, you are going to get whacked. This whacking costs the American people more than $3 billion more—$3 billion. The average family that uses another bank's ATM six times a month is going to pay about $200 a year more.

Do you know who it hurts? It hurts the little guy. It hurts the person who draws out that $30, $40 or $50, because the surcharge, which averages about $1.27, is paid in addition to the initial charge. Consumer groups have estimated the two charges average about $2.68 together.

Here is somebody trying to get out their $20 or $30 or $40—a senior citizen, a college student—and there is a $2.68 charge. That is a lot of money coming from the little guy. That is a heck of an interest rate. Years ago that would be called "usury"—usury to get your own money. That is really incredible.

That is why we have come forth with this amendment. Some people say, "Why are you getting into the private sector?" I will tell you why. What you have today is anticompetitive. Banks say consumers always have a choice to use an ATM that does not double charge. That is a joke. Seventy-nine percent of the ATMs are now double charging. I predict that by the end of the year that number will be over 90 percent. This is a situation where the consumer has little, if any, choice.

Many of my colleagues have said to me, "What is the big deal? It is only a couple of dollars." It may not be a big deal to us to pay an extra $3 when you are taking out $100 or $200. But it is a very big deal to senior citizens, to students and to working families who take out $20, $30 or $40 at a time.

ATM surcharges account for more than $3 billion a year. The fees themselves are skyrocketing out of control. The most common surcharge has increased from $1 to $1.50. That is right, when they introduced it, it started at $1. It is now $1.50. Forty-four percent of the ATMs charge $1.50 or more. It is going to go higher and higher unless Congress acts to stop it now. Keep in mind that this is a charge on top of a fee that the consumer is already paying to his or her own bank. It is a hidden bank fee. But they are paying.

A recent U.S. PIRG survey found that 83 percent of the banks charge their own customers an average of $1.18 per transaction whenever they use another ATM. When you add the most common charge to the average fee, that is $2.68. That is about $200 a year for a family that uses an ATM six times a month. That is outrageous.

Several States, including Connecticut—the State of my colleague, Senator DODD—Iowa, and Massachusetts are waging battles to ban double charges at the State level. But there is a question as to whether these measures would apply to federally chartered banks.

That is why Congress has to act. It has to act in order to preserve competition—in order to see to it that this monopolistic practice does not deprive people of real choice.

Mr. President, I hope my colleagues will look to help the little guy. This is an opportunity to give them the protection they so desperately need.

I yield the floor.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, how much time remains on the amendment of the Senator from New York?

The PRESIDING OFFICER. Ten minutes 29 seconds.

Mr. DODD. Mr. President, I ask that I use, say, 5 minutes and be notified when 5 minutes have transpired so that the author of the amendment has some additional time at the end to conclude his remarks.

Mr. President, there is little question that the surcharges seem to have become the No. 1 complaint by many consumers and consumer groups all across the Nation. Part of the reason for the increasing complaints in this area is the speed with which the surcharges have become attached to the ATM machines.

Frankly, I say to the Chair, and my colleagues, I was not an early supporter of the prohibition of these fees. When it was first proposed by the Senator from New York, I argued that we ought to let the market dictate how these fees would be set, convinced, as had happened with the credit card issue, that competition within the marketplace actually had the desired effect of creating a good level, a less decent level, and an understandable and rational level for fees and surcharges and grace periods, and the like, when it comes to credit cards.

It was my hope that would occur here with the ATM issue. The problem is that it just hasn't happened at all. We have had the opposite effect, in fact. Banks seem to have become more interested in acting like sort of an electronic Jesse James—taking their cut when the consumer wants to get access to their money. In fact, the Congressional Budget Office puts this a little more seriously in their study, noting:

> Paradoxically, the increase in supply of ATM machines has not led to the kind of reduction that would generally follow from supply and demand solutions.

This is the Congressional Budget Office testimony. My concern over the practice of surcharging was augmented by some other developments as well.

First was the decision by a major national bank to sue the State of Connecticut, my home State, to overturn my State's ban on surcharges. This demonstrated to me that the banking industry was unwilling to allow the individual States to make their own public policy decisions about this practice. As a result, it has become very clear that only Federal legislation would allow my State of Connecticut to maintain the protections for its citizens that it has chosen to enact.

In fact, the attorney general of my State, Richard Blumenthal, came to

Washington and testified strongly in favor of the D'Amato amendment. Let me quote him. He said:

> Federal legislation is vitally necessary to clarify our State's ability [a State rights issue] to enact such a prohibition. In addition, Federal legislation is necessary to ensure that consumers are protected from such fees whenever they use an ATM.

Also, let me note that despite Connecticut's ATM surcharge ban, the largest bank in my State announced, on July 14, that it was going to close some branches and open more ATMs around the State. The results rebut the argument that banks won't open new ATMs if this amendment passes. This is a living example where you have a ban, a moratorium on any new surcharges, and, yet, they are expanding the ATMs in my State.

So, clearly this ban, this legislation that is being offered by the Senator from New York, would not produce the results that its opponents are claiming.

Second, community banks in my State have expressed deep concerns that ATM surcharging could be used to give large banks with extensive proprietary networks an unfair advantage over community banks with fewer machines. Smaller banks are worried about this—not only consumers, but smaller banks are. This is particularly troublesome because of the regulatory and legislative decisions that allow banks to use the ATMs in the first place where, based upon the concept of universal access to the network, the large banks are reneging on that commitment. That is how they got this in the first place. This was going to be universal access. They have basically backed off that commitment.

Lastly, I have become very concerned over changes in bank underwriting standards for commercial loans and for credit card companies, which I have raised before and which was the subject of a front page Washington Post article today. It is a great concern where you have now these normal banking fees being replaced by surcharges and the like as a way of offsetting lowering the standards for credit. This ought to be a great concern of all of us. And the Washington Post article highlights this. You can lower your standard on credit card allocation, because you can make up whatever the losses would be in this area. I think putting this issue aside is a very dangerous road for us to be going.

As I reviewed the materials in preparation for the Banking Committee hearing, I couldn't help but be struck by the fact that loan standards and credit card underwriting standards have slipped as revenues from fees, which are almost pure profit, have escalated. I can't help but wonder whether the profit from these fees—$3 billion in ATM fees and $1.1 billion from fees charged their own customers when someone else bounces a check—aren't giving bank officials a false sense of security about their lending practices. If true, then this may be the most corrosive effect aspect of the recent boom in consumer banking fees of all types.

For those reasons, Mr. President, I believe the D'Amato amendment deserves to be adopted by this body. I urge my colleagues to do so.

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. D'AMATO. I yield 2 minutes to the Senator from Illinois.

Ms. MOSELEY-BRAUN. I thank the Senator from New York. I congratulate and commend the Senator from New York for his leadership in this area.

Mr. President, I am proud to be a cosponsor of this amendment to ban ATM surcharges. Over the past two years, the Banking Committee on which I serve has held numerous hearings on this issue. I think it is important to note that every time we have one of these hearings, more studies confirm what we have said all along: the practice of surcharging is anticompetitive, it exploits consumers and it should be banned.

When I was in law school at the University of Chicago, I was taught that competition in a free market is supposed to be all about lowering prices and providing better services to your customers in order to maintain market share. However, competition in a world of surcharging is like Alice in Wonderland, where nothing is as it should be. Surcharging actually encourages the abuse of a dominant position in the marketplace, promoting predatory prices. Competition in this instance is not about providing the best services for the best prices, rather it is about forcing your rivals out of the marketplace by raising their costs.

And these costs are spreading. ATM surcharges have soared since 1995, and consumers paid between $2.5 and $3 billion in surcharges last year. This figure is in addition to the almost $1 billion in interchange fees already collected for these same transactions. Seventy percent of all banks currently impose a surcharge, and the most common surcharge has risen from $1 to $1.50 over the last year.

If current trends continue, few ATMs will remain that have no surcharge, and consumers, despite surcharge warnings most institutions post on the computer screen or on the machine, will truly have no alternative but to be charged twice for the same transaction—especially now that some institutions are surcharging their own customers.

I am aware that there are some costs to convenience. The number of ATM machines has more than quintupled over the last decade. Americans used ATM machines billions of times last year, accessing their bank accounts and other financial services 24 hours a day, seven days a week. However the practice of surcharging has actually resulted in less convenience for many customers. The result of surcharges is "the incredible shrinking ATM network," far less convenience, longer searches and longer waiting lines for those who seek to avoid these double fees. As the Federal Reserve Bank of New York concluded, "to avoid surcharges, many consumers are likely visiting ATMs that are less convenient than those used previously." I know there are costs associated with deploying these new machines, handling increased transactions, and other maintenance and safety issues. However, consumers are paying quite a bit for the marginal "convenience" of these additional machines. According to David Balto of the Federal Trade Commission, assuming that surcharging has lead to the deployment of 40,000 new ATMs, the more than $2.5 billion in surcharges last year means that customers paid over $60,000 for each new ATM. Furthermore, banks do not just surcharge on new ATMs in remote locations, but on all of their machines. Therefore, many customers who may never use one of these new, remote ATMs pay for the "convenience" of having it exist.

Moreover, it should not be forgotten that banks moved customers to ATMs because, compared to teller transactions, ATMs were cheaper. According to a 1996 Mentis Corporation study, an ATM cash withdrawal from an in-branch ATM costs an average of 22 to 28 cents, while the cost of a teller transaction is 90 cents to $1.15. And in some cases, banks charge customers for completing transactions with a teller if those transactions could have been completed at an ATM.

Certainly ATMs are a convenience for customers, but the truth is that banks have deployed more ATMs because it means lower costs to banks.

I remember when banks paid their customers for the use of their money. Today, however, it's increasingly expensive for the average working family to manage even a simple banking account. Americans who make timely credit card payments, or no payments at all, face higher fees. Americans who avoid special banking services are considered unprofitable customers, and face higher fees.

Now, with ATM surcharges, Americans are discovering that they must pay banks more than an additional $155 each year simply to access their own money.

The market is out of whack. The public knows this is unfair, and their visceral reaction is a response to market excess.

I am hopeful that the financial industry will take the necessary steps to remedy this problem. If they do, I do not believe this provision should become law. Banks in some states have

demonstrated a willingness to address this issue. I call on the rest of the industry to follow their lead. Otherwise, the government has a duty to correct the abuse of double charging people for accessing their own hard-earned dollars. In an era of unprecedented bank profits, it is clearly a case of greed over need. I strongly support this amendment and urge all of my colleagues to do the same.

Mr. President, there are sound economic reasons why this proconsumer amendment ought to be passed. Whether you care about consumer issues or banks, you ought to support Senator D'AMATO's amendment, which I am proud to cosponsor.

I thank the Chair. I thank Senator D'AMATO. I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I do not know if there is anyone here ready to speak in opposition.

I see the Senator from Alabama.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I know this is a good-sounding and popular-appearing bill, but I am not one who enjoys going to banks and going in banks. Over the years, I have thoroughly enjoyed the opportunity to obtain the cash I need on a daily basis from ATM machines. In fact, it allows you to carry less cash in your pocket, and you can find ATM machines everywhere. They are exploding to every corner of America. Businesses have them. Grocery stores have them. And they cost money—$30-, $40-, $50-, $80,000 to put in one of those machines.

So it has been a remarkable, wonderful advancement for the people of America, that they can obtain money on virtually any corner of a city, at their grocery store, at their bank, at their gas station, and so forth. This has been a wonderful advancement.

It seems to me particularly odd that we would say that a bank which is servicing someone who is not their customer, who does not have an account at their bank, and yet they might have spent $50,000 to put in this ATM machine, cannot charge a fee for it; that someone can use their machine without being able to charge a fee. It seems to me that would be an unreasonable thing. I think most banks don't have it free for their own customers.

I wish to make a number of points. While this fee, I don't suggest, would eliminate all ATM machines, I think it is quite reasonable to suggest that it would eliminate marginal machines, and as we know when we take money out of an ATM machine, it pops up on the screen how much the fee is. So if you are at a grocery store and you have your own bank machine down the street, but you would like to get your cash in the grocery store and they are not going to service you but for $1.50, you do have a choice. You have your choice of going to your bank or going to a machine that may charge less.

I hope and expect that as we have an expansion of machines, we may well find some of these fees will begin to drop rather than increase, and that has been the pattern in free enterprise since its beginning. So it seems to me that what we are suggesting is that on a bankruptcy bill, where at least with regard to this committee that deals with bankruptcy we are tacking on a credit card banking issue that was not part of the markup on this bill, it could jeopardize the bill and not be relevant to what we are considering.

I note that the Banking Committee on July 30 on a bipartisan 11-to-7 vote rejected this amendment. They considered it in some detail, and that committee, after careful consideration, balancing the great utility and advantage of having ATM machines at virtually every corner versus the cost of it, have opted in favor of allowing the continued expansion and convenience of more and more machines. I do not think there is any doubt that the growth in availability of machines will end and, in fact, it is likely that we will have a reduction in the number of machines, therefore reducing convenience.

Many bank machines are totally dependent on access fees, and many of these are particularly convenient to small businesses and small grocery stores. Many new ATMs in rural and other low-volume, high-convenience sites operated by nonbanks will be economically unfeasible. They will be closed. They will not exist. You simply have to be able to make a profit if you are going to provide a service. Nobody is going to invest $30-, $40-, $50,000 if they do not have any prospect of a return. We know that. We talk about the big banks, but it is not always big banks that are involved.

Mr. President, I believe that on this bankruptcy bill, we ought not to be dealing with banking issues and credit card issues. Those are matters that ought to be held in those committees and, in fact, they have been considering it. I urge the Members of this body to wait for another forum, another time to deal with this issue and reject this amendment because it is not good economics. It is not good public policy to limit the expansion and the convenience and accessibility of ATM machines.

I thank the Chair.

Mr. BAUCUS. Mr. President, I rise in opposition to the amendment offered by the Senator from New York. First let me say that I have a great deal of sympathy for the problem that the Senator is attempting to address. When banks first began to install ATM machines, I remember the reluctance many consumers expressed about this new technology. They were worried about whether their deposits would be safe, whether strangers would find it easier to get into their bank accounts and steal their money. The banks initially sold consumers on the use of the machines by calling them a cost-saving measure—ATMs were supposed to help banks cut costs by allowing them to serve more people for longer hours, without the need for high employee salaries or costly new branches.

In those early years, it appeared that these claims were paying off. And consumers became addicted to the convenience. No longer did you have to spend your lunch hour at the bank's drive-in window to deposit a paycheck—you could do it after work at the ATM instead. Consumer demand also led to an unexpected growth of ATM machines located in businesses other than banks. Now you can do your banking at the grocery store, the convenience store, the airport—any other place where there is demand.

But the economics of operating ATMs in those remote locations are not the same as operating them in the bank building itself. It is a lot more expensive to service the machines, collect and process deposits every day, or to provide security. And the networking banks have provided means more consumers are using ATM machines at banks other than their own—again with higher operating costs.

The convenience of banking virtually any place at any time has its cost. ATM fees allow banks to recoup at least some of those costs from the consumers using the services.

I know that ATM fees rankle those of us who don't appreciate having to pay a fee to have access to our own money. And I also understand the arguments of the Senator from New York and others who claim big banks are making large profits from their fees.

However, I also believe that ATM fees represent the purest form of user fee. If consumers don't want to pay the fees, they don't have to use the ATMs. But for those who are willing to pay, the fees allow banks to provide ATMs in more locations, making it more convenient to do our banking.

If the D'Amato amendment is approved, two things will happen.

First, banks will immediately reevaluate the economics of all their ATMs, and those that are the least cost-effective will simply be removed. Rural areas, like those in my State of Montana, will be particularly hard hit. The low volume of usage, combined with the higher cost of maintenance because of the distances involved, will make many rural ATMs unaffordable for the sponsoring banks.

Let me give you just one example sent to me by the 1st Bank of Sidney, Montana. Sidney is a town representative of a lot of towns throughout Montana and other rural parts of our country. 1st Bank has an ATM machine at

a 24-hour gas station and convenience store located on the main street through town. Even with the current ATM fee, 1st Bank lost almost $8,000 on that machine in 1997. Now $8,000 doesn't sound like a lot of money, but in states like Montana, believe me it can be.

I don't know whether 1st Bank will close this particular ATM if they are not allowed to recoup at least part of their costs by charging a fee. I do know that right now, hundreds of Montanans who used that machine in 1997 had a choice—if they didn't think the convenience of the machine was worth the $1.00 fee, they didn't have to use the machine.

If the ATM is removed because the bank decides it isn't worth the cost, we have legislatively taken from these consumers the ability to make that choice. They won't be able to decide on their own whether the convenience is worth the cost. We will force them to find other ways to do their banking.

Approval of the D'Amato amendment will also have a second consequence, that I believe we need to consider. Right now, those who use ATMs pay for the convenience. In places where the fees don't cover the costs of operating the machines, those of us who don't use ATMs, or don't use them frequently, help subsidize those who do. Eliminating the ability to charge those who benefit from the convenience of an ATM simply makes it that much more difficult for the rest of us to avoid these charges.

The old adage "there is no free lunch" is very applicable here. Someone has to pay the cost of operating an ATM. If we prohibit banks from charging those who use ATMs, it simply means everybody else will end up picking up the tab. And it won't matter whether we discipline ourselves to do our banking inside the bank, through the drive-in window, or electronically in order to avoid the fees. Every transaction will carry part of the cost of operating that ATM, because it will be built into the banks' operating costs.

Mr. President, I don't think those of us here in Washington, DC, should be dictating to consumers how to do their banking. I believe consumers should be allowed to continue deciding for themselves whether the convenience of an ATM is worth the cost. If enough consumers decide the answer is no, the marketplace will correct itself. Banks will be forced to reduce fees and cull out less profitable locations.

But this will happen in response to consumer demand, not legislative fiat. I believe this it the right answer.

I urge my colleagues to vote against the D'Amato amendment.

Mr. FEINGOLD. Mr. President, I am pleased to support the amendment offered by the Senator from New York (Mr. D'AMATO).

This amendment is about simple fairness.

Mr. President, banks, credit unions, and the other owners of automatic teller machines are entitled to be compensated for the service they offer.

But consumers are also entitled to be treated fairly.

The D'Amato amendment strikes that balance.

This amendment does not fix prices.

It does not limit what ATM owners may charge for using their machines.

It simply prohibits charging consumers twice for the same service.

Mr. President, consumers become subject to ATM charges when they obtain an ATM card through their bank or credit union.

While the consumer's bank or credit union often has its own ATM machines at which account holders can bank, increasingly, banks and credit unions join a network of ATMs to give their account holders greater access.

Mr. President, when your bank or credit union joins an ATM network, it pays what is called an interchange fee to the network, and your bank or credit union may pass the cost of that interchange fee directly to you, or it may just add it into their overall cost of doing business—a cost that account holders help to bear.

But, Mr. President, consumers are now being forced to pay an additional fee, a surcharge, for using a network ATM.

When that happens, the consumer is being billed twice for the same transaction—once by their own bank, and once by the ATM owner.

Mr. President, consumers who are already charged by their own banks or credit unions for using an ATM feel that once is more than enough.

When consumers are charged twice for the privilege of accessing our own hard-earned money through an ATM, it's time for this body to take some action.

Mr. President, not only are consumers now being asked to pay twice for the privilege of accessing their own money, the second fee, or surcharge, often represents a big portion of the cash they want to withdraw.

The Senator from New York noted consumers may be hit with a surcharge of $3 or more just to take $20 out of their account.

This is especially a problem for consumers in under-served areas.

Because they lack ready access to their bank or credit union, those consumers are much more dependent on ATMs for every day financial services.

Mr. President, let me note here that not all ATM networks subject consumers to this double billing.

I understand there have been efforts, especially by community banks, to form networks that explicitly do not charge consumers twice.

While I applaud those efforts, they may not be enough.

Mr. President, in addition to the fundamental unfairness of these double charges to consumers, I am troubled that this fee structure may also put smaller banks and credit unions at a competitive disadvantage.

Customers seeking to avoid these double charges may move their accounts to larger banks that own these broad-based ATM networks, and as we've seen recently, these big banks are now merging with each other, which will only make matters worse for their smaller competitors.

Indeed, Mr. President, in this regard there have been some troubling developments in the past few weeks.

In particular, I was disturbed to hear reports that the Department of Justice is investigating whether or not some of the large ATM networks are engaging in illegal restraint of trade by seeking to prevent smaller banks from forming those very alliances that promise not to double charge consumers.

Mr. President, this amendment will end double-billing at ATMs.

It will ensure fairness for consumers, and it will put a stop to efforts that undermine the ability of our smaller community financial institutions to retain their customer base.

Mr. President, it's time to demand fairness for ATM users.

Paying additional fees at the ATM is something consumers can afford to live without.

Mr. KENNEDY. Mr. President, I rise in support of Senator D'AMATO's amendment to ban ATM surcharge fees.

This is good policy, and we all ought to vote in favor of it.

These fees, which in some instances have reached exorbitant levels like $5 or $10 per transaction, are charged against consumers to access their own money.

The large bank networks, which typically operate the automatic teller machines, already charge a transaction fee to smaller banks for the use of their network.

These surcharges are a second charge, directly to the consumer, for the privilege of using the machine.

Some have argued that consumer behavior has changed, so that consumers can learn how to minimize surcharges. They can do this by getting cash back on debit card purchases, or by taking more money out at one time.

But these are the savvy consumers, or those who are able to take out a large amount of money at one time. The consumers who end up paying these fees are those who have the fewest options: their money is tighter, or they are in an emergency situation, or they don't understand the system enough to avoid these fees. Do we want to protect the rights of the banks to take advantage of those consumers?

The banks now charge the consumer at every turn. They first said that tellers were too expensive and encouraged us to use machines. Now they charge

both the consumer, and the consumer's bank, for the privilege of using the ATM machine.

This gouging of the consumer has to stop!

Some have argued that we should allow banks to police themselves on this issue. In my home state of Massachusetts, for example, the Massachusetts Bankers Association has worked to organize fee free alliances between big and small banks so that consumers can use machines statewide and avoid surcharges. This is a terrific program, and I compliment the MBA for developing it.

Truly progressive organizations, like Fleet Bank which operates throughout New England, have agreed not to charge fees for ATM use in low and moderate income communities. This is progressive corporate policy, and I salute them for it.

These financial institutions can be a model for the nation.

Unfortunately, there are not enough banks like those in my home state.

And so we must pass this amendment. We have heard from consumers, and they have had enough.

I know banks have heard from their customers in response to these charges. They have complained about it, loud and clear.

If banks had been proactive and responded by policing themselves, we would not be compelled to pursue an amendment such as this.

These exorbitant charges are an outrage! The Senate must act to protect the consumer from excessive charges.

In a time in which we are debating bankruptcy legislation, which has been supported strongly by banks and credit card companies, we also need to enact some provisions which will help the working men and women of this country.

We must end the gouging of the American consumer! I urge my colleagues to join with me in supporting Senator D'AMATO's amendment.

Mr. SPECTER. Mr. President, the D'Amato amendment to limit fees charged by financial institutions for the use of automatic teller machines is a very close question, in my opinion, because it pits the consumer's interest in avoiding potentially excessive bank charges against existing market forces where ATM machines provide significant convenience for the depositor's access to cash.

On this state of the record, I do not believe that there has been a showing of excessive charges on the part of the banks. This issue might well be revisited in the Banking Committee with hearings, as opposed to being a floor amendment on this bill where the Judiciary Committee, on which I serve, did not have the benefit of an evidentiary record on the issue of excessive charges.

On the other hand, I do believe that there is substantial benefit and convenience to the consumer who has access to a cash withdrawal, far from home, at unusual hours and under circumstances where it is a significant convenience to be able to get the cash.

I know that when I go to a convenience store, for example, to buy milk, and pay a higher price, I dislike it; but I am mindful of the fact that it is late at night or I don't have to stand in a long line in a supermarket or it is on my way home. So, I grin and bear the somewhat higher charge.

In addition, there may be substantial merit to the contention that if the Congress acts to affect the market on this issue that the ATM machines will not be available or may be very few in number to reduce this convenience.

Accordingly, on this state of the record, on a very close question, I am voting against the D'Amato amendment.

Mr. DORGAN. Mr. President, I rise to discuss briefly my thoughts about the automated teller machine (ATM) fee ban amendment offered today by Senator D'AMATO to the bankruptcy reform bill.

I share the concerns that Senator D'AMATO and others have about the rapid, and seemingly unchecked, increases in ATM fees across this country over the past few years. There is compelling evidence that some banks are charging exorbitant ATM charges that impose an unnecessary and unfair financial burden on bank customers. For many consumers, this happens every time they use an ATM that's not owned by their bank. And there appears to be no end in sight to this explosion in ATM fees. I do applaud the work of Senator D'AMATO and others for bringing attention to this growing problem.

But regrettably, I was forced to vote against Senator D'AMATO's amendment, as drafted, because it failed to recognize that many of our rural communities have significantly higher costs for providing many kinds of services. I'm afraid that adopting Senator D'AMATO's approach may actually be harmful for people living in these higher-cost areas. In my judgment, this amendment might have forced some of our banks to shut down existing ATMs in more sparsely populated areas in our state or made it too costly for them to install new ones in places where they are needed.

Let me be clear on this point. I would have liked to support a proposal to stop those ATM owners who are charging excessive and, in some cases, outrageous fees. And I'm willing to consider other approaches to help put the brakes on ATM price gouging. Unfortunately, the amendment that Senator D'AMATO offered today is one that I could not support because it may inadvertently hurt rural America.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I ask unanimous consent that at the conclusion of the debate, the pending D'Amato amendment be temporarily laid aside and the Senate proceed to the debate on the Dodd amendment. I further ask that at 2 p.m. the Senate proceed to a vote in relationship to the Dodd amendment, to be followed immediately by a vote on or in relationship to the D'Amato amendment, with no intervening action and 2 minutes of debate between each vote. I further ask that the partial-birth abortion debate begin immediately following the vote in relationship to the Dodd amendment under the 4 hours outlined in the previous consent agreement.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Reserving the right to object, I think the Senator means the D'Amato amendment, at the conclusion of the vote on the D'Amato amendment.

Mr. GRASSLEY. Yes.

Mr. DODD. I think the Senator said the Dodd amendment. I think he means the D'Amato amendment. Is that correct?

Mr. GRASSLEY. Yes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Might I inquire how much time I have remaining.

The PRESIDING OFFICER. The Senator has 2 minutes 53 seconds.

Mr. D'AMATO. Mr. President, I ask unanimous consent, because I do not believe it will impede on the time allocated for consideration of the Dodd amendment—we will not go past 2 o'clock—that we have an additional 5 minutes for the proponents because I have some Members here who would like to speak to this.

The PRESIDING OFFICER. Is there objection?

Mr. SESSIONS. Mr. President, reserving the right to object, there are a number of amendments on this bill, and we have to finish this bill by 2 o'clock. I just think that there has always been an advantage on floor time for the proponents and not opponents. I know Senator GRASSLEY has no time. I reluctantly object.

Mr. GRASSLEY. I suggest we amend it by giving 5 minutes to Senator SESSIONS.

Mr. D'AMATO. Sure. If he would like, 5 minutes each. I would ask that we have——

Mr. SESSIONS. I would certainly go along with Senator GRASSLEY. I am not sure I will use any time. If Senator GRASSLEY is comfortable with it, I withdraw my objection.

Mr. D'AMATO. I thank the Senator.

I yield 3 minutes to Senator BRYAN.

Mr. BRYAN. Mr. President, I thank the distinguished chairman of the subcommittee for his leadership on this

issue. The banking industry is enjoying its sixth straight year of record profits, which topped $60 billion last year. That is good news. But unfortunately, as part of a growing trend, these record profits are coming from an increasing proliferation of fees on bank customers. The number of these separate bank fees has grown from 90 to 250 over the last 5 years.

Last year, banks made more than $3 billion alone on ATM surcharges. That is the new cash cow. And this is in addition to the $1 billion banks are paid as part of the interchange fee, which covers their cost of ATM transactions. So, that is where the surcharge comes in. The banks are already compensated through an interchange system. They are imposing an additional fee, a surcharge, which Senator D'AMATO and I and others object to, which, in effect, imposes a charge twice on the customer.

Mr. President, $1.50 or $2 for every ATM withdrawal may not seem like a lot, but over the course of a full year it adds up to several hundred dollars. Many banks for years prohibited these ATMs. In fact, three out of every four ATMs that are in place today were built before surcharges were prohibited, so the argument that somehow prohibiting the surcharge would limit the availability of ATMs is simply a specious argument. Two States that come to mind immediately, Connecticut and Iowa, prohibit ATM surcharges, and there is no evidence to suggest that customers in those two States are deprived of the option to use ATMs.

So, people, in effect, kind of feel entrapped. Initially the banks offered ATMs because they reduced the costs of their transactions. They are much less expensive than the teller transactions. Customers responded because of the convenience. A win-win proposition. Once customers got induced to use ATMs, then they got hooked, and now they are being reeled in by the bankers with these new charges, because the average ATM transaction cost is about 27 cents while a transaction involving a teller costs the bank roughly $2.93.

ATM charges are unfair, because the consumer is charged twice for the same transaction. Additionally, ATM surcharges have the anticompetitive effect of pressuring people to leave small banks—which may be their choice—for their larger banks, to avoid this double charge or the surcharge. I urge my colleagues to support the able and distinguished chairman and to support this.

Let me just tell you, both in Nevada and around the world, this is how the public views the ATM surcharge. You will note from the chart there, the ATM reaches out with a loaded pistol and the customer is held hostage. That is what these ATM surcharges are all about.

I urge support for my colleague's thoughtful legislation, I yield the floor, and thank the Senator for extending the privilege of the floor to me.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I commend both my colleague from Connecticut and Senator BRYAN from Nevada for their thoughtful presentations.

I tell you, when I look at the ATM cartoon over there, that Senator BRYAN has put up, it is interesting because that is exactly what is taking place, particularly to so many young people who don't have a choice, to the student who is at his college campus and there are only one or two of those ATMs around and everyone of them is double charging. It is excessive—to think they are paying $2.68 to take out their own money. If you are taking out $30 or $40 at a time, as many of the young people are, and many of our senior citizens, that is usurious by any standard.

The argument that somehow this is going to hurt competition is rather pathetic. This has really hurt the small banks, the credit unions, because they were deceived into not getting into competition while a huge network was built; 122,000 out of the 165,000 machines were installed well before the double charges.

Let's take a look and see. Since the double charges, in the past 2 years, have been imposed—17 percent double charged going into 1996. The next year, it jumped to 59 percent. And the following year, 79—79 percent of all of the ATMs are now double charging. They came into existence and were making a profit before the surcharges. This is just a way of really doing what Senator BRYAN's description, the chart, showed so eloquently. You are really holding up the consumer, because it is anticompetitive, antichoice. This number, 79 percent—that is temporary. We have seen them grow. You will top out at over 90 percent by the end of next year, there is no doubt.

So there is little choice. There is no reason. It is anticompetitive, antipeople, and we should have the courage to say enough is enough. Let our States determine whether or not this should be permitted. When the State of Iowa and the State of Connecticut have attempted to ban double charges, surcharges, they have not seen a diminution. But now, even their law will be threatened, and is in court, as it relates to those States that want to protect consumers. So we are whipsawing them both ways, and there is only the Federal Government that can make a difference.

I hope my colleagues will join with me in voting to give people a real choice without that additional burden being placed on them.

Mr. President, I yield the floor. I thank my colleagues for permitting us the additional time to make known our thoughts and our views.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. D'AMATO. Mr. President, may I inquire of the manager, does he intend to make a motion to table now? And then we will lay that aside and we can ask for the yeas and nays now? Would that save time?

Mr. GRASSLEY. I move to table the D'Amato amendment.

Mr. D'AMATO. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. GRASSLEY. I move the D'Amato amendment be set aside.

The PRESIDING OFFICER. By a previous order, the Senator from Connecticut is recognized.

AMENDMENT NO. 3598 TO AMENDMENT NO. 3559

(Purpose: To amend the Truth in Lending Act with respect to extensions of credit to consumers under the age of 21)

Mr. DODD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Connecticut [Mr. DODD] proposes an amendment numbered 3598 to amendment numbered 3559.

Mr. DODD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. ___. EXTENSIONS OF CREDIT TO UNDERAGE CONSUMERS.

(a) IN GENERAL.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following:

"(5) APPLICATIONS FROM UNDERAGE CONSUMERS.—

"(A) PROHIBITION ON ISSUANCE.—No credit card may be issued to, or open end credit plan established on behalf of, a consumer who has not reached the age of 21 unless the consumer has submitted a written application to the card issuer that meets the requirements of subparagraph (B).

"(B) APPLICATION REQUIREMENTS.—An application to open a credit card account by an individual who has not reached the age of 21 as of the date of submission of the application shall require—

"(i) the signature of the parent or guardian of the consumer indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has reached the age of 21; or

"(ii) submission by the consumer of financial information indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.".

(b) REGULATORY AUTHORITY.—The Board of Governors of the Federal Reserve System

may issue such rules or publish such model forms as it considers necessary to carry out section 127(c)(5) of the Truth in Lending Act, as amended by this section.

The PRESIDING OFFICER. The Chair might say, under the previous order, there is 40 minutes equally divided.

Mr. DODD. Mr. President, one of the most troubling developments in the hotly contested battle among the credit card issuers to sign up new customers has been the aggressive way in which they have targeted people under the age of 21, particularly college students. We are engaged, obviously, in a debate about the bankruptcy bill here. The authors of this bill, and I commend them for it, recognize there has been an explosion of people who are taking advantage of the Bankruptcy Act to avoid their financial obligations.

It seems appropriate in the context of this bill that we also recognize that there has been an explosion of efforts to sign up younger people, particularly on college campuses, to credit cards, recognizing that, as many have pointed out, these students are ill prepared to meet their own financial obligations. Inevitably, they either incur debt and end up in tremendous difficulty or their parents assume the responsibilities, which can occur with upper-income people who can afford it.

Just this past August, to make the point, a fellow by the name of John Simpson, who is an administrator at the University of Indiana, said:

> This is a terrible thing. We lose more students to credit card debt than academic failure, at the University of Indiana.

What I am trying to lay out here is a proposal that is not outrageous. Basically, what it says is if you are between the ages of 18 and 21—no contract is valid for someone under 18, so a credit card obligation for someone under 18 would be voided anyway. But between 18 and 21, either show that individual has independent economic means—a job or whatever—or parental permission. If you can do that, fine, then you can market and issue a credit card to those individuals. We set up separate standards on drinking in this country for those 21 and under, and for tax purposes. It seems to me this little window in here could save an awful lot of students, an awful lot of families, the kind of hardship.

Let me lay out the case for you here on a factual basis. Solicitations to this age group have become more intense for a variety of reasons. First, it is one of the few market segments in which there are always new faces to go after. It is also an age group in which brand loyalty can be established. In the words of one major credit card issuer, we are in the relationship business and we want to build relationships early on. Recent press stories have reported that people hold on to their first credit card for up to 15 years.

In fact, people under the age of 21 are such a hot target for credit card marketers that the upcoming card marketing conference this year—this is the card marketing conference 1998, which is going to be held in Las Vegas. They have a seminar beginning at 12 noon on the day of this conference that is entitled "Targeting Teens: You Never Forget Your First Card," to give you an idea of how much a part of this the credit card companies have in mind. As I say, this is indicating their deep interest in this constituency.

Credit card issuers are also enticing colleges and universities to help promote their products. Professor Robert Manning at Georgetown University here in Washington told my staff that some colleges receive tens of thousands of dollars per year for exclusive marketing agreements. Other colleges receive as much as 1 percent of all student charges from credit card issuers in return for marketing or affinity agreements.

Even those colleges who don't enter into such agreements are making money. Robert Bugai, president of College Marketing Intelligence, told the American Banker that colleges charge up to $400 per day for each credit card company that sets up a table on campus. That can run into the tens of thousands of dollars by the end of just one semester.

Last February, I went to the main campus of the University of Connecticut to meet with student leaders about this issue. Quite honestly, I was surprised by the amount of solicitations going on in the student union, and I was also surprised the degree to which the students themselves were concerned about the constant barrage of offers they were receiving.

The offers seemed very attractive, Mr. President. One student intern in my office this summer received four solicitations in just 2 weeks. One promised "get eight cheap flights now while you still have 18 weeks of vacation." That is the solicitation, part of it geared to this young woman in my employment.

Another promised a platinum card with what appeared to be a low interest rate, until you read, of course, the fine print that it applied only to balance transfers, not to the account overall.

Only one of the four, Discover card, offered a brochure about credit terms, but in doing so, often offered a spring break sweepstakes in order to attract these students. In fact, the Chicago Tribune reported just last month that the average college freshman will receive 50 solicitations during their first few months at college. The Tribune further reported that college students get green-lighted for a line of credit that can reach more than $10,000 just on the strength of a signature and a student identification card.

Mr. President, there is a serious public policy question about whether people in that age bracket can be presumed to be able to make the sensible financial choices that are being forced on them from this barrage of marketing. While it is very difficult to get reliable information from the credit card issuers about their marketing practices to people under the age of 21, those statistics that are available are deeply, deeply troubling.

The American Banker newspaper reported that Visa found that 8.7 percent of bankruptcy filers were under the age of 25. A Chicago Tribune article from August 16 of this year cited that bankruptcies "among those under 25 have doubled over the last 5 years from 250,000 to 500,000."

The bankruptcy legislation, the underlying bill, is going to make it harder to take the bankruptcy act. I understand that. I am not opposed to that idea. But if simultaneously you are going out and aggressively sending eight solicitations to an 18-year-old in my office promising them free vacation breaks or flights, I think there is something wrong here.

I don't mind getting tougher on the bankruptcy laws, but I think we have to get a little tougher to say the 18-, 19- and 20-years-olds who have no independent financial means and without parental permission are getting signed up merely on a student ID card and signature, incurring $10,000 worth of debt.

The same survey found that 27 percent of undergraduate student applicants had four or more credit cards—27 percent, four or more credit cards—and found that 14 percent had credit card balances between $3,000 and $7,000, while 10 percent had credit card balances greater than $7,000. This figure of 24 percent with credit card debts in excess of $3,000 is more than double the number from last year.

Moreover, while there is evidence that student debt is skyrocketing, some surveys by credit card issuers themselves show that this same group of consumers is woefully uninformed about the basic credit card terms and issues. A 1993 American Express/Consumer Federation of America study found that only 22 percent of more than 2,000 college students surveyed knew that the annual percentage rate is the best indicator of the true cost of a loan. Only 30 percent of those surveyed knew that each bank set the interest rate on their credit card, so that it is possible to shop around for the best rate. Only 30 percent knew that interest was charged on new purchases if you carry a balance over from the previous month.

Some college administrators, bucking the trend to use credit card issuers as a source of income, have become so concerned that they have banned credit card companies from their campuses and have even gone so far as to ban credit card advertisements from the campus bookstores. Roger

Witherspoon, Vice President of Student Development at John Jay College of Criminal Justice in New York, banned card solicitors saying indebtedness was causing students to drop out:

Middle-class parents can bail out their kids when this happens, but lower-income parents can't—

Mr. Witherspoon said in an interview.

Kids only find out later how much it messes up their lives.

That is a quotation from the American Banker.

The amendment I am proposing today does not take any such Draconian action against the credit card companies. Let me state, by the way—and I should have said this at the outset—many credit card companies do require parental notice or approval or evidence of independent means. There are many who do this, but there are some who do not at all. As most laws, it is not targeted to those who show good judgment and good sense, but to the few who do not. Unfortunately, here we have a few who do not at all.

This amendment does not go so far as to ban credit cards or ban advertising. It merely says, look, between the ages of 18 and 21, either show you have the independent means to meet the obligations or get a signature from a parent that they understand that their child is about to take out a credit card.

I agree with those who argue, as I said, there are millions of people under the age of 21 who hold full-time jobs who are as deserving of credit as anyone over the age of 21. I agree with that. I also believe students should continue to have access to credit, and we should not prohibit the market from making that available.

I also recognize the period of time from 18 to 21 is an age of transition from adolescence to adulthood, and as we do many places in Federal law, extra care is needed to make sure mistakes made from youthful inexperience does not haunt these people for the rest of their lives or a good part of it.

All my amendment does is require a credit card issuer, prior to granting credit, to obtain one of two things from the applicant under 21: Either they get the signature of a parent or guardian, or they obtain information that demonstrates the existence of an independent means of paying off the amount of credit offered.

Federal law already says people under age 21 shouldn't drink alcohol. Our Tax Code makes the presumption if someone is a full-time student under the age of 23 that they are financially dependent on their parents or their guardians.

Is it so much really to ask that credit card issuers, in the midst of a bankruptcy bill that will make it tougher for people to take this act, is it so much to ask that we try to find out if someone under the age of 21 is financially capable of paying back their debt or that their parents are willing to assume the financial responsibility?

Mr. President, it is my understanding that most, as I said, responsible credit card issuers already require this information in one form or another. Is it too much to ask the entire credit card industry to strive to meet their own best practices when it comes to our children?

Mr. President, I do not believe this amendment is either unduly burdensome on the credit card industry nor is it unfair to the people under the age of 21. The fact of the matter is that these abusive solicitations assume that if the young adult is unable to pay, they will be bailed out by their parents. Many times this means that parents must sacrifice other things in order to make sure their child does not start out their adult life in a financial hold with an ugly black mark on their credit history.

By adopting this amendment, Mr. President, the Senate will send a clear message to those aggressive credit card companies that we will no longer countenance this abusive behavior. This amendment corrects that behavior by making those overly aggressive companies, credit companies, exercise their best judgment—instead of their most craven instincts—when it comes to people obtaining their own credit cards for the very first time.

Mr. President, I note as well in an interview on an NPR program just a few days ago on this very issue, Nancy Lloyd, who is the editor-at-large for Kiplinger's Personal Finance magazine, had this to say about this practice. She said:

. . . that the real reason that credit-card companies are going after college students is that they know that after a parent has spent several tens of thousands of dollars to educate their student, that if they fall behind on their bills that the parent will bail them out, even though legally they don't really have to [if they are younger than 18].

Mr. President, I do not think this is a radical proposal here. It is again a huge problem. NBC, I think last evening, ran a special report on the "Fleecing of America" where they talked about this problem. I think there have been a number of other reports on this.

We began this issue last December in raising the question when I went to my own campuses in Connecticut, as I mentioned a moment ago, to find out how widespread this was. And, again, the information we have been able to gather indicates, I think based on the data we have, limited as it is, that this is a growing problem. The debt has doubled now in the last year. It is going to get worse.

If we adopt the underlying bill, which I hope we do, then obviously the ability to use the Bankruptcy Act to excuse obligations are going to get tougher. So it seems to me if we are going to do a favor to the banks by making it tougher for people to avoid their financial responsibilities, which we should, we should also send a message that we do not believe you ought to be dumping, as we did last year in this country, 3 billion credit card solicitations but particularly dumping these where there is a student ID and a signature from a 19-year-old, without independent means or parental approval, to assume $3,000, $4,000, $5,000, $6,000, $7,000, $8,000, $9,000, $10,000 worth of financial debt. I think that is wrong. I think we ought to try to stop it. I think this amendment brings us in the right direction, and I urge its adoption.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I know this amendment is well intentioned, but, look, I was a building tradesman as a young 16-year-old. I made a pretty good living as a building tradesman. I could have wound up as a building tradesman, which I was very proud to be. In fact, I have had some colleagues say I should have stuck with it. In fact, one of them, when they found out I was a janitor at one time putting myself through college, said I should have stuck with it. Maybe so.

But I would hate like heck to have some artificial rule or some regulatory rule by some regulatory agency of Government say that I, as a hard-working carpenter, would not be able to get a credit card and get credit that I might need for my family to make our lives a little easier because of artificial rulings like what happens as a result of this well-intentioned amendment.

This is a slap in the face of every 18-, 19-, 20-year-old—and 17-year-old, 16-year-old even—people who can work; 16-, 17-, 18-, 19-year-olds who work hard, who are supporting their families. They may not be college graduates, they may not look like they quite have the future of some who have gone to college and done the things that they have done—might look like—but they are not going to be able to get credit cards under this without going through some big rigmarole decided by Government.

This amendment would unfairly discriminate against young adults. I think it has to be opposed. I hope our colleagues will think about this. The amendment would require parental consent for extensions of open-ended credit to young adults under the age of 21—think of that—a lot of young adults who are supporting their families and doing what is right but have not been to college, or even those who have been to college or who are working well in college, as I had to do, unless they could demonstrate "an independent means of repaying" the obligation.

While it is not entirely clear what would constitute an "independent means of repaying" a debt, one thing is clear: This amendment would have the

bizarre effect of requiring an emancipated but temporarily unemployed 20-year-old mother to obtain her parent's consent before receiving a credit card, or an unemployed 20-year-old carpenter who, because of seasonal layoffs, might not have a job for a couple of weeks, or maybe 3 weeks or maybe a month or two. I understand that life; I understand how difficult it is.

The same would be true with respect to a 20-year-old plumber or a construction worker, like I have mentioned, who is between jobs, in between jobs, and with respect to a 20-year-old recently discharged from the U.S. military and looking for civilian employment—somebody who is honorable and decent, would pay back any debt no matter what happened but could not get a credit card because of these artificial restraints.

Moreover, the amendment makes no provision whatsoever for a young adult whose parents or guardians may be deceased. It is also not clear what responsibility, if any, the amendment would impose on a lender to verify that the signature of a parent or a guardian was authentic.

In short, discriminating against individuals between the ages of 18 and 21 when it comes to obtaining credit simply cannot be justified just because we know it is pretty easy to get a credit card out there and it is abused from time to time. But this amendment furthers the abuse only in the opposite direction. Also, it is important to note that individuals under 18 cannot enter into binding contracts and, therefore, any credit inadvertently extended to them is unenforceable.

I encourage my colleagues to join me in opposing this amendment, notwithstanding some of the arguments on the other side of the aisle. It is important to note that not all 18-, 19- or 20-year-old kids are college students or unemployed or irresponsible or bums, if you want to say it. Some have families, some serve in the military and are asked to defend our country. It puts their ability to gain credit in doubt. Or should we just call it the way it is? In the hands of Federal regulators.

You know, there is a limit to everything. Yes, there are some abuses here. Yes, some of these credit card companies get some of these young people hooked on credit cards just thinking they can live with that credit card. But in the interest of solving that problem, do you abuse all the other honest, hard-working, decent young people between the ages of 18 and 21? Do you discriminate against them so that they cannot get a credit card that might make their lives maybe a little bit better or a little more livable or a little more sustainable?

My attitude is that this amendment ought to be defeated because it is a one-sided amendment that, in my opinion, has not been well thought through. That is not a knock at my colleague because I know he is sincere. I know he has good intentions here. I know there are some values that he is trying to defend. But I think the overwhelming weight of maturity is on the side of young people in that age group who deserve to have a credit card, who would pay back their credit card, who are responsible citizens, and who do not need the Federal Government to tell them what they can or cannot do in this area. The fact that we have a few credit card companies that abuse the system does not mean we should pass this type of an amendment.

I am happy to yield 5 minutes to the distinguished Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the Senator from Utah for his excellent remarks in pointing out a lot of people age 18 to 21 are not in college. I just had two children graduate from college, and I still have one in college. I believe a credit card is a good thing for them to have. Almost every college student is going to have a credit card. The fact that we have some competition in the credit card industry—they are offering lower rates and less charges if you will use their credit card—that is good. We have needed that.

In my opinion, the biggest complaint about credit cards is they charge too much interest. Those rates have been driven down because of competition. There are 6,000 credit card companies, and they are sending out mailings, and they are encouraging people to use their credit cards. What is bad about that?

What troubles me is we are saying if you want a young person to have a credit card, they may have to get their parents to sign as a cosigner and be financially responsible for their debt. That doesn't seem to me to be fair or correct. Maybe a parent says if you want to get a credit card you can, but it is your debt to pay, not mine. The requirement we are debating now would prohibit them from getting a credit card under those circumstances.

What about young persons whose parents are deceased?

The Federal Government should not be stepping in and telling a credit card company you can't take a chance on a young person, or that you have to get the parent to cosign before giving a young adult a credit card. This seems unhealthy to me. I am sure it is true that credit card companies like to get young people accustomed to using their cards and hope they will use them throughout their career. I don't know that there is anything wrong with that.

Mr. President, a 20-year-old who may be temporarily unemployed may find a credit card to be very valuable. Suppose you have to drive to a job interview and the guy down at the car inspection place says your vehicle emits too much pollution and you have to spend $400 to fix it; or your tire blows out and you have to have $75 to get the car towed and another $50 to put a tire on it. A person may not have that cash in their pocket at times such as these, when they really need it. That is why credit cards are a good thing.

Credit cards have been helpful in many ways for citizens in America. The problem is with people who abuse them and who don't show personal discipline. We all know that is a problem. We need to encourage personal discipline, not have the Federal Government telling a young person they can't have a credit card unless their parent agrees to pay their debt.

Mr. DODD. Mr. President, we have no intervening business between now and 2 o'clock. Several of our colleagues want to speak on this amendment. I ask unanimous consent we take the time between now and 2 o'clock and equally divide it between opponents and proponents of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I yield to my colleague from North Dakota.

Mr. DORGAN. Mr. President, I rise in support of the amendment. I have listened to the debate; it is an interesting debate, but I think all of us know what is happening in this country with respect to credit cards.

I noticed an article this morning in the Washington Post on the front page:

Banks Risk New Wave of Bad Debt: Report Cites Easing of Credit Standards.

They are talking about commercial loans in response to competition; even though the risks will rise, they are easing standards, lowering lending standards.

What are the standards of lending for credit cards? Go to a college campus and look in the mailboxes and see the solicitations for these kids that have no jobs, no income, no independent means of paying. They get solicitations from companies halfway around the country.

The solicitation says we have something to offer you. You don't have money? We have money. We will give you a piece of plastic, and you get a preapproved range of credit. Sign this, send it in, and it is all yours.

It is Byzantine to me to see what is happening with the ''blizzarding'' of these credit cards all around the country, even to people without money.

Yesterday in our mail, my son got a solicitation from the Diners Club. My son, Brendon, is a great young guy. In fact, do you know what Brendon told me he wanted to do when he gets big? Brendon told me he wants to be like his grandpa.

Now, I know that doesn t sound surprising. But do you know why? It s because he wants to be retired, just like his grandpa.

You see, Brendon went to Arizona to see his grandpa, and Brendon watched his granddaddy and thought, that's what I want to do—sleep late, get up and golf a little bit, come home, have some lunch, take a nap, then watch television.

Brendon says, "I like what grandpa has. I want to be retired." Brendon is only 11.

The Diners Club wrote to Brendon. Doreen Edelman, Senior vice president at Diners Club, wrote:

Dear Brendon, Whether you travel for business or pleasure, wouldn't you like a Card that rewards your spending with something you could really use—frequent flyer miles on the major airline of your choice?

It says get our Diners card. You can go to lounges, you can go to fancy restaurants, you can rent cars, you can pay for your airline ticket.

I didn't show Brendon this last night because the fact that Brendon would like to be retired might persuade him that he would like a Diners Club card, too, but he is only 11. He doesn't have a job. He doesn't have any money. He isn't going to have a Diners Club card.

I don't know whether Doreen Edelman, senior vice president of the Diners Club, listens to this debate. In fact, it looks like she is from Sioux Falls, SD. Holy cow, I didn't think anybody from either of the Dakotas would think this way—that an 11-year-old boy ought to get a Diners Club card.

I know why he got this. They don't know him from a head of lettuce. They don't know Brendon Patrick Dorgan. They gathered the name someplace and sent him a little letter that says they would like him to get a Diners Club card.

It would serve them right to have all these 11-year-olds send this in, get the Diners Club card and go spend some money.

I come from a town of 300 people. If someone in business on the main street of my hometown said, Do you know what I want to do? I want to send some 11-year-old an invitation to have credit with us. That person would have to be drunk or just dumb. What are they thinking? That is what is happening.

I know this debate is a little more serious than that. It is about the explosion of credit cards to college kids and so on. I understand that. But this is a wonderful example of how ridiculous it has become, isn't it? It is just indiscriminate. Are you alive? Do you breathe? Do you have a name? Are you on a list? Congratulations, we would like to offer you some preapproved credit.

What kind of standard is that? What kind of business behavior is that?

I happen to support the underlying bill. I believe the pendulum has swung too far on bankruptcy. I think it ought to swing back some. I am prepared to support the underlying bill. I also believe those in this country who run these businesses and send solicitations to 11-year-old boys and solicit every college student in the country with credit cards with preapproved limits, I think they have some responsibility, as well. That is what the Senator from Connecticut is saying today with his amendment. They have some responsibility, too.

I am pleased, on behalf of Brendon, to support the amendment by the Senator from Connecticut. Perhaps we will make some progress in saying to those who extend credit in this country, yes, we believe bankruptcy laws ought to be adjusted some; you are right about that. We also believe you have some responsibility, which you have been ignoring with the solicitations you are making indiscriminately around this country.

I yield the floor.

Mr. DODD. Mr. President, I thank my colleague for his eloquent, and if it weren't so sad, quite humorous story.

Unfortunately, Brendon is not alone. This wasn't just a mistake. Unfortunately, parents can tell you all across the country that this happens with regularity.

Let me address, if I can, the argument of my good friend and colleague from Utah and why he is opposed to this bill. The great irony is the 20-year-old who is out working and not in college is disadvantaged. That individual has to prove that they have independent economic means.

Listen to this recent report:

All the rules have been suspended when it comes to college students. They get a green light, a line of credit that can reach more than $10,000 just on the strength of a signature and a student ID. Almost comically, [the report says], low standards become much different after graduation and bona fide adulthood.

So the individual who is out working, who is not in school, who may have a real need for a credit card, has to go through far many more hoops than the students between the ages of 18 and 21 who can get these solicitations.

This wasn't Brendon. This was a 19-year-old—get eight cheap flights now while you still have 18 weeks of vacation. How about a platinum card to a 19-year-old without any indication of whether or not she can meet her payments?

I don't think it is outrageous to say, look, just show your independent economic means. You have a job, fine. Or get a parental signature. That is not asking too much. Just listen to the administrators at these universities. A terrible thing. We lose more students to credit card debt than academic failure now. The numbers have doubled. It is not overreaching to say to an 18- or 19-year-old that we are going to insist that you prove an independent economic ability to pay—the same as an 18- or 19-year-old would have to do were they not in college—or have a parental signature. Everybody knows that if you are under 18, you can't enter into a contract and have it binding. People have said, "Why not just make it 18?" Well, those contracts don't hold up and the bankruptcy laws would not cover it.

So between 18 and 21, we are just trying to cover those areas here, statistically. I talked about this study that was done and I failed to identify who did it. Nellie Mae, a major student loan provider in New England, conducted a survey of students who had applied for student loans. "The results of the credit card examination is alarming." Those are their words, not mine. They found that 27 percent of the undergraduate student applicants had four or more credit cards, and 14 percent of the credit card balances, debt, between $3,000 and $7,000, and 10 percent in excess of $7,000. That is before they graduated from college, in addition to student loans.

So our efforts here—while the credit card companies see this, apparently, as draconian—will provide relief in the underlying bill. Requiring a little higher standard for college students before they get credit cards is not asking too much. I know the ranking member on the committee wanted to be heard on this, and I see my colleague from Utah.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I find it somewhat ironic and, frankly, indefensible that some of my colleagues on the other side of the aisle who are now arguing for parental consent here in order to obtain a credit card, would also argue against requiring parental consent for children who want to get an abortion. I have spent 22 years listening to that.

Now, Mr. President, they are arguing for parental consent for young adults between the ages of 18 and 21. Look, if they are willing to amend the amendment—every State in this Union, to my knowledge, refuses to give credit or allow credit to be granted to young people less than 18 years of age. So I think Senator DORGAN's son already fits within that category. We are talking about 18-, 19- and 20-year-olds who work, who are in the service, are capable of doing this, who should not have to get parental consent, should not have to justify it. I am talking against discrimination against young people of that age.

My friends on the other side argue for parental consent for young adults between 18 and 21. These are not even minor children. How can anybody argue, on the one hand, that if you are between 18 and 21 and you want a credit card, you have to get your parents' consent, and on the other hand you should not have to get parental consent if a minor wants to get an abortion? I don't know about you, Mr.

President, but to me that sounds a little bit inconsistent—maybe a smidgen.

Every State in the Union, to my knowledge, refuses to give the right to grant credit to young people below 18 years of age. At least that is my understanding. So that is not even an issue. Despite all of the enjoyment we had from the remarks of the Senator from North Dakota, that isn't an issue. Are we going to discriminate against hard-working young people who are 18, 19 and 20 years of age, who should have a right to credit, just because we have some excesses in our society that really are not justified?

Mr. President, one of the arguments that I hear again and again is that the bankruptcy crisis in this country is the fault of credit card companies because they offer credit too freely to low- and moderate-income Americans. Opponent of reform have, during the hearing process, shown us piles of credit card solicitations to make their point. They want us to believe that the nation's bankruptcy crisis is the fault of easy access to credit, and not of the individual who abuses the bankruptcy system with all of its present loopholes.

First, I would like to say a few words about taking personal responsibility for our actions. In a free world, each of us is confronted with a variety of offers on a daily basis, some of which we should accept, and some of which we should not. It is the responsibility of the individual to decide whether or not to take on debt and it is the responsibility of the individual to live with the consequences of that decision. Before we can begin to make meaningful reform to the bankruptcy laws, we simple must stop the finger pointing and accept personal responsibility for our spending and borrowing practices. That said, if we look at the objective facts, it is apparent that credit card debt is only a small fraction—about 16 percent—of the debt of a typical bankruptcy filer.

The reason I have this chart up is because the yellow part of that, the higher part of it, shows the total consumer debtload. You will notice that between 1980 and 1997 the consumer debtload has remained about the same. But look at the red part, increase in consumer bankruptcy filings, which this bill would help to resolve. The increase in consumer bankruptcy filings has continued to go up off the charts. So the debtload doesn't appear to be the major problem. What is the major problem is the abuse of the bankruptcy system, which this bill would correct.

Surprisingly, as Americans continue to use consumer credit at about the same level as they have historically over the last few years, bankruptcy filings have more than quadrupled. In other words, as this chart demonstrates, the debt load that individuals carry has not changed very much. What has changed is the attitude of Americans toward bankruptcy. People turning to bankruptcy today are not in significantly more difficult debt that those in the past. But rather than taking responsibility and working their way out of debt, too many people are choosing bankruptcy as a first resort.

As I have said before, excessive bankruptcy filings hurt all of us. When someone who could pay their debts instead opts for bankruptcy, the rest of us effectively pay their unpaid bills for them. Bigger businesses and creditors raise prices and interest rates to offset their losses, and small businesses may actually be forced into bankruptcy themselves.

But his issue is not just about the impact of bankruptcy on the rest of us. It is about personal integrity and personal responsibility. When you borrow money from someone else, you make an implicit promise to do whatever you can to pay that money back. Our present bankruptcy laws undermine this basic principle. This bill will help solve that. They allow people who can repay their debts to avoid doing so because they find their debts "inconvenient" or because repaying their debts would require them to change their lifestyle.

Ironically, many of the people who say that we do not need to reform the bankruptcy code because easy access to credit is to blame, are the very same people who argue that poor and moderate income individuals desperately need, and should not be denied, credit. These are the same groups who, fifteen years ago, complained that the credit industry granted credit only to the elite and wealthy, and deprived lower-income Americans of the important opportunity to use credit. And, these are the same people who vociferously argued just a few weeks ago in favor of the Community Reinvestment Act or CRA, which requires banks to extend loans and credit to low and moderate income Americans who live in low income areas.

Rather than reform the bankruptcy code, some have suggested imposing burdensome credit qualification standards on the credit card companies. Let me be clear: amending this bill to require onerous credit qualification standards will result in an immediate reduction in the availability of credit to lower-income individuals. And, imposing burdensome requirements on credit card companies that do nothing to help consumers—and that in fact hurt consumers by adding to the cost of being a credit card holder—is nothing more than an obvious attempt to derail bankruptcy reform. On the other hand, I remain open to measures that will help people become fully aware of the implications of debt before they incur it.

Mr. President, the explosion in bankruptcy filings has less to do with causes and more to do with motivations. The stigma of bankruptcy is all but gone. Bankruptcy has become a routine financial planning device used to unload inconvenient debts, rather than a last resort for people who truly need it. The rest of us end up footing the bill for abuses in the bankruptcy system in many forms, including higher prices and higher interest rates. What this legislation will accomplish is straightforward: If a person is able to repay some of what they owe, they will be required to do so. We must restore personal accountability to the bankruptcy system. If we do not, every family in America, many of whom struggle to make ends meet but manage to live within their means, will continue to shoulder the financial burden of those who abuse the system.

Mr. President, I do not mean to suggest that the bankruptcy system has failed us altogether. It provides a way for individuals who have experienced a a financially devastating event to get back on their feet. The problem we face is that current law does not simply allow bankruptcy filers to get back on their feet * * * it allows abusers of the system to get ahead of Americans who make good on their debts. S. 1301 is a common-sense bill that will provide a much needed adjustment to the bankruptcy system.

Again, I will end with what I started with. If my colleagues on the other side want to exclude those below 18 years of age, as the States basically do, so that credit card companies cannot solicit them, I would be more than happy to do that. I would be more than happy to grant that right now, right here on the floor. But if they are going to discriminate against 18-, 19-, and 20-year-old people who are hard-working, decent kids, some of them working at trades in society as I did, some of them working in the military, some of them who may be temporarily out of work but are good, honest people, then I have to say we have to fight against this amendment.

Last but not least, I will say that I find it ironic that they would require parental consent to get credit card credit while at the same time not requiring parental consent with regard to getting an abortion.

I reserve the remainder of my time.

Mr. DODD. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. Two minutes, 40 seconds.

Mr. DODD. How much time remains on the other side?

The PRESIDING OFFICER. Four minutes, 30 seconds.

Mr. HATCH. Mr. President, I would be happy to yield our remaining time to the distinguished Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 4 minutes.

Mr. FAIRCLOTH. I thank Senator HATCH.

Mr. President, I agree with Senator DODD. I, too, have been concerned about the problem that we see as a mounting one. We ought not to be putting college students in debt, particularly at such an early stage of their life. But my concern is that this law has to be carefully crafted. I do not feel that it has been. My concern is that this has to be put together in such a way that we do not deny credit to students who might need it while they are away from home. But further, I don't want to stop or impede credit to noncollege students under the age of 21.

We have not had hearings on this. And we have not attempted to curb the credit cards through any private methods. Senator DODD is on the Banking Committee. So am I. I would prefer to defer this, and hold hearings, and move legislation independently out of the Banking Committee, where it should begin, and then to the floor.

I think the Senator from Connecticut has certainly identified a real and continuing problem. But I have struggled with how to legally cut off credit to college students for some time. I have noticed card solicitations at college bookstores and the marketing efforts that have been put forth that are aimed solely at young people. But why do we tell someone in the U.S. Army, who is under the age of 21, whom we without any hesitation send into harm's way to be killed, or whatever, that they can't get a credit card? This will diminish the chances of getting one, very likely.

That is why I think we should take more time and care in crafting this proposal so that we do it right. It needs to be done, but it needs to be done right. What do you do with the people who lie on their application? These are some of the things that are going to be difficult to legislate unless we take time and do it right.

You have to remember that while there may be only really a few credit card brands, they are offered by literally thousands and tens of thousands of institutions. All of the burden of administering this requirement is going to be absorbed by them. Those costs are going to be passed along to you know who. And that is all of us who do business with banks or use credit cards.

Again I say, let's carefully consider this before we legislate. Let's bring it to the Banking Committee. Let's have hearings on it and at that point craft a bill that would serve the purposes and go in the direction that Senator DODD is trying to go. I would be happy in the subcommittee that I chair to hold hearings on it just as soon as possible. It really is a problem. But we need to take our time and correct it.

Thank you, Mr. President.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I yield 3 minutes to the distinguished Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I thank the distinguished Senator from Connecticut.

I would like to ask several brief questions to clear up this debate.

It has been said on the floor of the Senate that because of the amendment of the Senator from Connecticut, that someone serving in the U.S. military under the age of 21 could not get a credit card. Is that true or false?

Mr. DODD. That is absolutely false. That person has independent economic means, being a paid member of the military.

Mr. DURBIN. It has also been said that someone with a job with low income under the age of 21 would be unable to get a credit card under the Dodd amendment. Is that true or false?

Mr. DODD. That is false. A person who is unemployed might have unemployment compensation and independent means, and would certainly qualify.

Mr. DURBIN. I thank the Senator from Connecticut, because I think there have been some things said on the floor which mischaracterize his amendment.

This debate has had a lot of reference to personal responsibility. We ought to keep a board up here to check off every time someone says "personal responsibility." We are talking about bankruptcy, and I think people who go into bankruptcy court should be personally responsible. I agree. Most Democrats agree. Most Republicans agree. There are some people abusing the bankruptcy system. We ought to change it.

The purpose of this bill is to tighten it up so that the abusers cannot take advantage of bankruptcy to the disadvantage of everybody else in America.

But in addition to personal responsibility, can't we discuss corporate responsibility here? Don't the credit card companies have some responsibility to make certain that they don't offer risky credit, luring children and people who are unwitting into credit situations, and then watching it topple over them? Those same credit card companies which come to us and say, once these people have fallen deep in debt, once they have all this credit card debt that they can't get out of, and go to bankruptcy court, be strict and tough with them—I agree with that, but shouldn't we also have a standard which says these companies should be responsible in dealing with American consumers?

Senator DODD offers an amendment which is timely. Listen to this. Bankruptcies among those under the age of 25 have doubled in the last 5 years. It is estimated that a college student in the first few months on campus will receive 50 solicitations for credit cards. A student without virtually any income is going to be that target customer. As Senator DODD has said over and over again, too many kids who are lured into easy credit before they have an income or the maturity to handle it end up deeply in debt, and many of them jeopardize their education as a result of it.

The Senator from Alabama said he wanted his children to have a credit card at college. I wanted mine to have one as well. He would have gladly signed for that. I would have as well. That is exactly what the Dodd amendment says. If a parent will put a signature on the line, the credit card is there for the college student.

But I salute the Senator from Connecticut. I support his amendment. I think we are talking about corporate responsibility and personal responsibility.

Mr. DODD. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Connecticut has 1 minute.

Mr. DODD. Mr. President, I thank my colleague from Illinois.

Just to make the case once again, we have watched consumer debt double to $455 billion in the last couple of years. It has tripled and quadrupled. It seems to me that to listen to what university people are saying, we have more people dropping out of school—as the official at the University of Indiana said, "We lose more students to credit card debt than academic failure"—we have some indication of what is going on here. To say between the ages of 18 and 21 just to get a parental signature, or an indication of independent economic means, as you would if you were not a student, is not asking too much. It seems to me that is the bare minimum standard of what we ought to be asking of the credit card companies. It is my understanding that most responsible credit card issuers already require them.

Is it asking too much that the credit card companies strive to meet their own best practices in order to do something to protect our children? If you are under 18, the law already protects you. It is that window between 18 and 21.

Mr. President, I hope that our colleagues will recognize that it is really not fair for middle-income families to get saddled with a $10,000 debt because of solicitations that were made to a student in school. This is a license for us to do something about it.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DODD. I urge adoption of the amendment.

Mr. GRASSLEY. Mr. President, I move to table the Dodd amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the Dodd amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Georgia [Mr. COVERDELL] is necessarily absent.

Mr. FORD. I announce that the Senator from South Carolina [Mr. HOLLINGS] is necessarily absent.

The result was announced—yeas 58, nays 40, as follows:

[Rollcall Vote No. 274 Leg.]

YEAS—58

Abraham	Gorton	McConnell
Allard	Gramm	Murkowski
Ashcroft	Grams	Nickles
Bennett	Grassley	Reid
Biden	Gregg	Robb
Bond	Hagel	Roberts
Brownback	Hatch	Roth
Burns	Helms	Santorum
Campbell	Hutchinson	Sessions
Chafee	Hutchison	Shelby
Cochran	Inhofe	Smith (NH)
Collins	Jeffords	Snowe
Craig	Johnson	Specter
DeWine	Kempthorne	Stevens
Domenici	Kohl	Thomas
Enzi	Kyl	Thompson
Faircloth	Lott	Thurmond
Feingold	Lugar	Warner
Frist	Mack	
Glenn	McCain	

NAYS—40

Akaka	Dorgan	Lieberman
Baucus	Durbin	Mikulski
Bingaman	Feinstein	Moseley-Braun
Boxer	Ford	Moynihan
Breaux	Graham	Murray
Bryan	Harkin	Reed
Bumpers	Inouye	Rockefeller
Byrd	Kennedy	Sarbanes
Cleland	Kerrey	Smith (OR)
Coats	Kerry	Torricelli
Conrad	Landrieu	Wellstone
D'Amato	Lautenberg	Wyden
Daschle	Leahy	
Dodd	Levin	

NOT VOTING—2

Coverdell	Hollings

The motion to lay on the table the amendment (No. 3598) was agreed to.

Mr. GRASSLEY. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3597

The PRESIDING OFFICER. The Senate will now consider amendment No. 3597, the D'Amato amendment, with 2 minutes equally divided.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the next vote in this series be limited to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

The Senate will come to order. The Senator from New York is recognized. The Senate will please come to order. The Senate will please come to order for 1 minute of debate on each side before we vote.

The Senator from New York.

Mr. D'AMATO. Mr. President, my amendment would stop one of the most predatory, outrageous practices that consumers throughout America are facing, double charging at ATMs. There are fewer opportunities to avoid that. Since the ban has been lifted, we have gone from 17 percent of the ATMs double charging to 79 percent in 2 years. There is no consumer choice. At the end of next year, it will be over 90 percent, and it will cost the average consumer $2.68 for that transaction.

For people who say, "Oh, we'll lose the ATMs if we do not have these double charges," 74 percent of the ATMs that are in existence today existed prior to the double charges.

If you want to help the little guy, here is an opportunity. Vote for the ATM ban; vote for the consumer. Give that little guy a choice and give people an opportunity to vote. I am urging people to vote no against the motion to table.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. GRASSLEY. I yield back our time.

The PRESIDING OFFICER. The yeas and nays have been ordered on the motion to table the D'Amato amendment.

Mr. LOTT. Parliamentary inquiry.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. I did want to move to table and ask for the yeas and nays. Have the yeas and nays been ordered?

The PRESIDING OFFICER. That motion has been made.

The question is on agreeing to the motion to lay on the table the D'Amato amendment, No. 3597. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Georgia (Mr. COVERDELL) is necessarily absent.

Mr. FORD. I announce that the Senator from South Carolina (Mr. HOLLINGS) is necessarily absent.

The PRESIDING OFFICER (Mr. GRAMS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 72, nays 26, as follows:

[Rollcall Vote No. 275 Leg.]

YEAS—72

Abraham	Byrd	Dorgan
Akaka	Campbell	Enzi
Allard	Cleland	Faircloth
Ashcroft	Coats	Ford
Baucus	Cochran	Frist
Bennett	Collins	Gorton
Biden	Conrad	Graham
Bond	Craig	Gramm
Breaux	Daschle	Grams
Brownback	DeWine	Grassley
Burns	Domenici	Gregg
Hagel	Leahy	Santorum
Hatch	Lott	Sessions
Helms	Lugar	Shelby
Hutchinson	Mack	Smith (NH)
Hutchison	McConnell	Smith (OR)
Inhofe	Murkowski	Snowe
Inouye	Nickles	Specter
Jeffords	Reed	Stevens
Johnson	Reid	Thomas
Kempthorne	Robb	Thompson
Kerrey	Roberts	Thurmond
Kyl	Rockefeller	Warner
Landrieu	Roth	Wyden

NAYS—26

Bingaman	Feinstein	McCain
Boxer	Glenn	Mikulski
Bryan	Harkin	Moseley-Braun
Bumpers	Kennedy	Moynihan
Chafee	Kerry	Murray
D'Amato	Kohl	Sarbanes
Dodd	Lautenberg	Torricelli
Durbin	Levin	Wellstone
Feingold	Lieberman	

NOT VOTING—2

Coverdell	Hollings

The motion to lay on the table the amendment (No. 3597) was agreed to.

Mr. D'AMATO. Mr. President, I ask unanimous consent for 3 minutes to make some comments with regard to this vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. D'AMATO. Mr. President, first let me thank my colleagues who have given me the opportunity to at least bring this to a vote. Needless to say, the great power and the great number of dollars involved were felt. It is a lot of money that a lot of little people are paying that they shouldn't be paying.

Indeed, some Members have indicated to me that notwithstanding their opposition to intruding generally into the private sector, they would reconsider their votes in the future if they continue to see the predatory price-gouging practices that are anticonsumer and monopolistic; if they continue to see not only the number of ATMs that are double charging continue, but lack of consumer choice; and escalating fees.

Indeed, the Senate majority leader told me, and he is on the floor now, that he has indicated to those in the banking community that they had better look carefully at what they are doing. If they continue to impose these fees on the little people, he may not be nearly as supportive.

This is a close issue as it relates to when should government become involved in the private sector. I believe that time has come.

Having said that, this is a battle, but it is not the end. I lost this battle, but I am prepared to continue this battle and win the war until and unless we see a rollback in what is taking place now—and that is taking advantage of the consumer, the little guy, the working families of America.

Again, I thank my colleagues who have yielded me this time to make this observation. We lost the battle, but not the war.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS CONSENT REQUEST—S. 2279

Mr. LOTT. Mr. President, I had earlier made a unanimous consent request to bring up the FAA issue, now known as the Wendell Ford National Air Transportation System Improvement Act. This is a bill we really need to get done before we leave. If we don't get it cleared, cloture will take so much time, we may wind up not being able to complete this bill.

It is important for airports, air passengers, the airline industry, the entire country.

Again, I ask unanimous consent that it be in order for the majority leader, after consultation with the Democratic leader, proceed to the consideration of S. 2279, the National Air Transportation System Improvement Act. I further ask that during the pendency of S. 2279 only relevant amendments be in order to the bill.

Mr. DASCHLE. Mr. President, I object.

Let me explain, briefly. I share the majority leader's determination to complete work on this legislation. We need to get this bill done before the end of the session. The Senators from Maryland and at least the Democratic Senator from Virginia, as well as the Senators from Illinois, are still attempting to work through some problems relating to the legislation and their respective States. I am hopeful we can come to some successful conclusion in those discussions at an early date, but until that has been completely worked through, we will have to object.

I hope that we continue to put the pressure on those who are interested, as we are, in coming to closure on this, to get it done soon.

I yield the floor.

The PRESIDING OFFICER. The objection is heard.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, 3 days ago the distinguished majority leader asked unanimous consent, and it was objected to. I come to the floor, again, to say I am happy to work with any Senators. The Senator from Virginia, Senator WARNER, is now in agreement. I believe that the Senators from Illinois are, although unhappy, willing to let this bill move forward. If the Senators from Maryland have a problem, I am happy to consider their amendments in the normal legislative process.

Mr. President, let me point out something very important here. We are talking about aviation safety, security, capacity, and noise projects, and we are talking about billions of dollars' worth. I hope that we will be able to move forward on this bill very quickly. There are over $2 billion worth of projects that can be held in abeyance because of our failure to reauthorize the FAA. We are talking about safety, Mr. President, which is a very big burden for all of us to bear. So I want to tell my colleagues on the other side of the aisle—especially the Senators from Maryland—I am ready to sit down at any time and see if we can work out any differences that we have to their satisfaction so that we can get this very important reauthorization completed before the end of the fiscal year.

I ask unanimous consent that two letters regarding this legislation be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AMERICAN ASSOCIATION OF AIRPORT EXECUTIVES, AIRPORTS COUNCIL INTERNATIONAL,
Alexandria, VA, September 14, 1998.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR MCCAIN: We are writing you with an urgent request for assistance. Congress is scheduled to adjourn for the year in less than one month and the Senate has still not taken up pending "must pass" legislation to reauthorize programs of the FAA. The current authorization expires September 30. If Congress fails to reauthorize the Airport Improvement Program (AIP) prior to adjournment, the FAA will be unable to find critically needed safety, security, capacity or noise projects at airports in every state in the nation.

Please do what you can in your role as chairman of the authorizing committee to bring this bill to the Senate floor immediately so that a final version of the measure can be adopted and signed into law prior to adjournment. Without swift congressional action, critically needed federal funding for runways, taxiways, security and hundreds of other projects will stop after September 30.

Thank you for your immediate attention on this important matter.

Sincerely,

CHARLES BARCLAY,
President, AAAE.
DAVID Z. PLAVIN,
President, ACI–NA.

SEPTEMBER 11, 1998.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: We are writing with an urgent request. Congress is scheduled to adjourn for the year in less than one month and the Senate has still not taken up pending "must pass" legislation to reauthorize programs of the FAA. The current authorization expires September 30. If Congress fails to reauthorize the Airport Improvement Program prior to adjournment, the FAA will be unable to fund critically needed safety, security, capacity and noise projects at airports in every state in the nation. The House of Representatives has already passed its version of the legislation, H.R. 4057.

Please bring FAA reauthorization legislation to the floor immediately, so that a final version of the measure can be adopted and signed into law prior to adjournment. Without swift congressional action, critically needed federal funding for runways, taxiways, security and hundreds of other projects will stop after September 30.

Thank you for your immediate attention on this important matter.

Sincerely,

Charles Barclay, American Association of Airport Executives; Paula Bline, Airport Consultants Council; T. Peter Ruane, American Road & Transportation Builders Assn.; Stephen Sandherr, Associated General Contractors; Luther Graef, American Society of Civil Engineers; Peggy Hudson, American Portland Cement Alliance; Henry Ogrodzinski, National Association of State Aviation Officials; David Plavin, Airports Council International-North America; Phil Boyer, Aircraft Owners and Pilots Association; Stephen Alterman, Cargo Airline Association; Carol Hallett, Air Transport Association.

PARTIAL-BIRTH ABORTION BAN ACT OF 1997—VETO

The PRESIDING OFFICER. Under the previous unanimous consent agreement, the Senate will now proceed to the consideration of the veto message on H.R. 1122.

The Presiding Officer laid before the Senate a message from the House of Representatives, which was read as follows:

The House of Representatives having proceeded to reconsider the bill veto message to accompany H.R. 1122 entitled "An Act to amend title 18, United States Code, to ban partial-birth abortions", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

The PRESIDING OFFICER. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?

The time for debate will be limited to 4 hours, to be equally divided between and controlled by the majority leader and the minority leader or their designees.

Who yields time?

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, today we begin debate on the issue of partial-birth abortion, the override of the President's veto, which he vetoed last year.

I believe this is one of the most important issues, if not the most important issue, we will face in this session of Congress because it deals really at the core with who we are as a country and to what degree we respect life in this country and recognize life, recognize an individual's inclusion into our family and our society. In many cases, just as we did in voting with respect to banking laws, we have to draw lines. Part of the legislative process is, in fact, drawing lines. Sometimes those lines are not clear. Sometimes the votes are very difficult, and it is hard

to understand in the area of gray where exactly you do draw the line.

I have always felt, with respect to the issue of partial-birth abortion, that it was a very good place to at least draw the first line, in a very emotional and confrontational issue, because we are not really talking about abortion at that point, we are talking about infanticide. I think if you took a poll in this Senate and asked whether Members of the Senate were in favor of infanticide, I hope and pray that the answer would be 100 percent "no," that they are not in favor of infanticide. Well, I believe, as many Senators have said, that this is infanticide. This is a baby that is just 3 inches from being delivered and is brutally killed.

Let's do a little rundown of how we got to the point where we are today. In the last session of Congress, Congress passed a bill to ban this procedure, sent it to the President, and he vetoed it. We had a vote to override in September of 1996. We had 59 votes on the floor of the Senate. They overrode in the House. Last year, the Senate and House passed the bill. The House, in July of this year, overrode the President's veto with a vote of 296–132, I believe. So now it comes to the Senate.

Earlier this year, we had 64 votes on the floor of the U.S. Senate to ban this procedure. Unfortunately, as overwhelming a vote as that is, it is three short of the votes necessary to override a Presidential veto. So that is the state of play; three votes in the U.S. Senate separate us from what I believe is a clarion call to the world that we are a civilized country that respects life which is born in this country, or nearly born in this country, and a signal to the country that we are just not quite ready to open our arms as a society and welcome every member to it.

Let's first go through the particulars of what this procedure is, because I think it is important to define the procedure so everybody knows exactly what we are talking about. These charts that I am going to show you, while they are not particularly easy to look at, they do accurately describe, according to several doctors who perform them, what a partial-birth abortion is. It is performed on babies that are at 20 weeks of gestation, roughly halfway through the gestational process. Between 20, 24, 26, and longer, it can be performed. One of the reasons, in fact, that this procedure was developed was to perform it on solely late-term and very-late-term babies. So at 20 weeks, and thereafter, this procedure is used. The baby, as you see, in the mother's womb is usually in a head-down position at that age. The doctor, over a 3-day period, will begin to dilate the cervix, open up the cervix, so the doctor can reach in with forceps and grab the baby's foot and turn the baby around and pull the baby out in a breach position.

I want to state that again. This is a 3-day procedure. It starts with the dilation of the cervix over a 2-day period. On the third day, when the cervix is sufficiently dilated, the doctor goes in with these forceps, grabs one of the baby's limbs —usually the foot—pulls the baby, turns the baby around into a breach position, and begins to pull the baby out of the birth canal in the breach position. As most people understand, that is a very dangerous position for a normal delivery. You try to avoid breach births because of the danger to the mother, as well as the baby. In this situation, they deliberately turn the baby around and deliver the baby in a breach position. The baby is then pulled out feet-first until all of the baby is outside of the mother, with the exception of the head. The reason for that is, the head being a hard part of the body, even at that age—certainly a harder part of the body at that age—and it is the biggest single part of the body, it is left inside of the mother.

The third thing that happens is, the physician reaches in with one hand and finds the back of the baby's skull. You can't see the back of the baby's skull because the skull and neck are still inside of the mother. So they probe and find the soft part here, right at the base of the skull. Then they take what is called a Metzenbaum scissors and thrust it into the back of the baby's skull, open up a hole in the baby's skull, introduce a suction catheter, which is a high-powered suction device, and suck the baby's brains out, which causes the collapse of the skull, and then a dead baby is delivered.

This is the brutal procedure that the President of the United States has said must remain legal. This is the brutal procedure that we have the opportunity here in the U.S. Senate to say has no place in a civilized society.

I would think that would be enough reason—that simply its brutality, its shocking, barbaric, horrific nature would be enough reason to ban this procedure. But there is much more. There are so many reasons to ban this procedure beyond its horrific and barbaric nature.

In a few minutes, I will detail exactly all of those reasons. I will detail all of the lies that have been put out by the other side to protect this rogue procedure, which is not done in any hospital, not taught in any medical school, has not been peer-reviewed and studied by others to make sure that this was a proper, safe procedure. This is a rogue procedure done only in abortion clinics, when no one else is watching.

Mr. President, I will yield the floor, as I know the Senator from Missouri is here and has other time commitments. I will yield and turn it over to the Senator from Missouri, Senator BOND.

The PRESIDING OFFICER (Mr. SMITH of Oregon). The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I very much appreciate the courtesy of my distinguished colleague from Pennsylvania. I congratulate him on his leadership on this issue. These are very, very difficult procedures to describe and I know that no one here on the floor enjoys hearing them. But the fact that they are so horrendous I think is one of the reasons we are here today.

Mr. President, the Senate will soon vote on whether to override the President's veto of the Partial Birth Abortion Ban Act. This legislation would ban a particularly hideous form of late term abortion known as "partial birth" abortion. Unfortunately, while a majority of Senators supported the ban last year, the vote count was not enough at that time to override the subsequent veto by President Clinton.

I hope that some Senators will have had a change of heart since then and will vote to override the veto.

This is a horrible procedure. The Senator from New York, Mr. MOYNIHAN, has likened it to infanticide. Remember that these are "late-term" abortions, meaning they take place during or after the 5th month of pregnancy. A fully developed fetus is brought down the birth canal, feet first, and then delivered, all but the head. Then the abortionist takes a pair of scissors, inserts them in the back of the baby's neck, and collapses the brain, and the baby is delivered: dead.

I would note the American Medical Association, representing thousands of doctors, believes the ban is justified and that there is no room in medicine for this procedure.

The overwhelming majority of the American people and Missourians are rightly revolted by this. Some states have banned the procedure, and the state of Missouri has come very close to banning it. Few other issues have generated so much mail and so many phone calls to my office. People feel very very strongly about banning this procedure. And it is easy to see why.

And, the partial birth abortion ban has passed in both the House and the Senate by large majorities. In fact, the issue would be settled if President Clinton hadn't vetoed the bill last year, against the wishes of an overwhelming number of Americans.

Rarely have I seen a President, like this one, who is willing to ignore the wishes of the overwhelming majority of the American people. The overwhelming majority is opposed to this hideous procedure.

I have been asked why we are holding this vote in the Senate, when we are likely to fall short of what is needed to override the veto? We are holding this vote today because the President made a terrible mistake in vetoing the bill. It is up to Congress—it is up to Congress on this issue to listen to the people, to try to reverse it.

Tomorrow we will have the opportunity to correct the President's mistake. We are going to work on it. I ask our constituents and the constituents of other Senators who may be undecided to let them know how important overriding this veto is. I hope—I sincerely, honestly, and devoutly hope—that we will muster the necessary votes to override the veto tomorrow.

I thank the Chair. I particularly thank my colleague from Pennsylvania.

Mr. SANTORUM. Mr. President, I thank the Senator from Missouri for his excellent comments and for his strong support for this legislation.

Mr. President, I think it is important to understand a little bit more about this procedure and what has been said about this procedure over time by those who defend its use. I think it is very instructive to understand the history of what has been said so we can better understand what really is the final thread that those who oppose this ban hold onto in order to justify their vote against banning this procedure.

The first, I guess, almost incredible thing was when this bill was first introduced in the House—and in the Senate, by BOB SMITH here in the Senate—the original response by those who were opposed to this bill was that—this is the National Abortion Federation that called the ". . . illustrations of partial birth abortions highly imaginative, artistically designed but with little relationship to truth or to medicine."

Myriad other reports denied that this even occurred; that there is no such thing as partial-birth abortion; or, as they like to call it, intact D&X. The truth is that Dr. Haskell, who was one of the originators of this procedure, described this procedure at a National Abortion Federation meeting in 1992—by the way, the original quote that I quoted from was in 1995—3 years later. Yet, 3 years prior, a doctor spoke before the group and described this very procedure using the very drawings that you saw earlier. Yet, 3 years later, that same federation that Dr. Haskell spoke before denied it exists and denied those pictures and depictions of the procedure had anything to do with reality. Lie No. 1.

Lie No. 2: This was used by several of the people you may hear from. Those who will defend this procedure on the floor today cite several women who have come forward to say that this procedure was necessary to preserve their health and future fertility, or life. One of the women who has been used—in fact, the President called her up to the White House and brought her before the American public in testimony that she has given. She said she was told by her anesthesiologist that the fetus would endure no pain. This is because the mother is given a narcotic, analgesia, at a dose based upon her weight. The narcotic is passed via the placenta directly into the fetal bloodstream. Due to the enormous weight difference, a medical coma is induced in the fetus and there is a neurological fetal demise. There is never a live birth. The baby dies.

This was the testimony of a doctor who does this procedure before the House Judiciary Committee. Obviously, lots of anesthesiologists who provide anesthesia to women who are going through labor and delivery become incensed that someone would make such a statement—that by giving a woman anesthesia, enough would pass into the baby to kill the baby. In fact, they came up here to the House and Senate pleading to testify to set the record straight, because there were women who were not taking anesthesia because of what they had heard.

This is Norig Ellison, president of the American Society of Anesthesiologists, 4 years ago:

> In my medical judgment it would be necessary—in order to achieve "neurological demise" of fetus in a "partial birth" abortion—to anesthetize the mother to such a degree as to place her own health in serious jeopardy.

In other words, it wouldn't happen. Another lie.

Third lie, again, about anesthesia, that:

> The fetus dies from an overdose of anesthesia given to the mother intravenously.

Again, Planned Parenthood said the first one.

Dr. Haskell, who, again, is one of the abortionists who does this procedure, said to the American Medical News:

> "Let's talk about whether or not the fetus is dead beforehand. . . ." Haskell: "No, it's not. No, it's really not."

Lie No. 3, being perpetrated on the American public and the Congress, in almost all cases rebuffed by their own people.

Lie No. 4—this was a doozy:

> Partial-birth abortion is "rare."

Once they got past the point of accepting the fact that it happened, that they admitted that it happened, they then went out and said that this was "rare"; it only happened a few hundred times a year:

> This surgical procedure is used only in "rare" cases, fewer than 500 per year. It is most often performed in the cases of wanted pregnancies gone tragically wrong, when a family learns late in pregnancy of severe fetal anomalies, or medical condition that threatens the pregnant woman's life or health.

This was signed by a slew of abortion rights organizations: The Guttmacher Institute, Planned Parenthood, National Organization of Women, Zero Population Growth, Population Action International, National Abortion Federation, and others. They all signed this. They all signed this letter to Congress. They testified in a letter to Congress that this was the fact, that it was only tragic cases and there were only a few. But according to the Bergen County Record—and I have to tip my cap to them because, unfortunately, the entire press corps in Washington, DC, read this letter and accepted it as fact and reported consistently that that was the fact. I asked many of the press corps did they bother to check, did they bother to check to see whether, in fact, the number and the circumstances were accurate? Did anyone bother to call a local abortion clinic in their city and ask?

The answer was a resounding—that's right—nothing. The Bergen County Record was one newspaper that did. September 15, 1996, just 10 days before the vote to override the President's veto in 1996:

> But interviews with physicians who use the method reveal that in New Jersey alone, at least 1500 partial-birth abortions are performed each year—three times the supposed national rate.

Several months later we find out what really was going on.

> Ron Fitzsimmons has suggested that between 3,000 and 5,000 partial-birth abortions could be performed annually.

Now, how do we know that he is right? We have absolutely no way of knowing he is right. I will quote from the American Medical Association, Journal of the American Medical Association just last month with respect to how we know how many of these are done.

> First of all, States do not provide abortion-related information to the CDC.
>
> Second, data gathered varies widely from State to State with some States lacking information on as many as 40 to 50 percent of abortions performed within their jurisdiction.
>
> Third, the category the CDC uses to report the method of abortion does not differentiate between what is called dilation and evacuation, D&E, and intact D&X, or partial birth abortion.

We have no way of knowing, and even if they accurately reported it, some States don't collect the data and those that do, don't report 40 to 50 percent of the data. So how do we know? Those of us who are here trying to argue that this procedure should be banned have to rely upon Ron Fitzsimmons for the information. And who is Ron Fitzsimmons? He is the chief lobbyist for all the abortion clinics in this country that oppose this bill. So we have to use the information given to us by those who, by the way, have consistently lied, who also don't want the procedure to be banned. We have to accept their numbers as fact because there is no other way to independently check them. So I would just allow you to use your imagination as to what the number really is in this country. If they admit to 3,000 to 5,000, what is the real number?

Lie No. 5. "Partial-birth abortion is only used to save a woman's life or health or when the fetus is deformed."

This is Ron Fitzsimmons 2 years previous. Let's rewind 2 years back to 1995.

The procedure was used rarely or only on women whose lives were in danger or whose fetuses were damaged.

And I can give you lots of other quotes, by the way, from the Senate floor and from the House floor that maintained this position, as well as all the other organizations that you just saw on the last chart, that that was the reason this procedure was created for those who it is used on, and that is why it needs to remain legal.

The truth: New York Times February 26, 1997:

Ron Fitzsimmons admitted he "lied through my teeth" when he said the procedure was used rarely and only on women whose lives were in danger or whose fetuses were damaged.

Ron Fitzsimmons, again quoted in the American Medical News March 3, 1997:

What the abortion rights supporters failed to acknowledge, Fitzsimmons said, is that the vast majority of these abortions are performed in the 20-plus week range on healthy fetuses and healthy mothers. "The abortion rights folks know it, the antiabortion folks know it and so probably does everyone else," he said.

Well, of course, we knew it. We knew it because Dr. James T. McMahon, who is now deceased, about 6 years ago said that he performed most of the abortions, partial-birth abortions on healthy mothers with healthy babies late in pregnancy, in his case up to the eighth and ninth month of pregnancy. He classified only 9 percent of that total of the 2,000 partial-birth abortion procedures he alone did, he classified only 9 percent of that total as involving maternal health indications of which the most common maternal health indication that he gave as a reason for doing the abortion was depression; 56 percent were for "fetal flaws," and those are his words, that included many nonlethal disorders, a sizable number as minor as cleft palate.

Yes, we knew. We came to the floor and we said here are the facts. And the other side stood behind the lies. They parroted them knowing that they weren't true. They parroted them either knowing they weren't true or praying that they could hide behind others who would try to fool the American public.

The sixth untruth and the final one, at least to date the final one. This is the last untruth that those who continue to oppose banning this procedure hold on to, this last thread of deception. And that is that "partial-birth abortion protects women's health."

President Clinton, in his veto message, April 10, 1996, when he vetoed the first ban:

I understand the desire to eliminate the use of a procedure that appears inhumane. But to eliminate it without taking into consideration the rare and tragic circumstances in which its use may be necessary would be even more inhumane.

Fast forward to October 10, 1997, a year ago, when he vetoed this bill.

H.R. 1122 does not contain an exception to the measure's ban that will adequately protect the lives and health of the small group of women in tragic circumstances who need a an abortion performed at a late stage of pregnancy to avert death or serious injury.

One comment first. This bill clearly has a life-of-the-mother provision. If this procedure is in any way necessary to prevent the death of the mother, it can be used.

The President says "to avert the death or serious injury." To try to convince the American public that we do not have a life-of-the-mother exception, again, is disingenuous at best.

"Serious Injury," let's go to the American Medical Association. Who is the American Medical Association? Most people know it is the largest association of doctors in this country. What is the American Medical Association position on abortion? They are in favor of abortion rights; very strongly in favor of abortion rights.

What is the American Medical Association's position on banning medical procedures? They abhor banning medical procedures. They believe that medical procedures should be left to physicians to determine what is good medicine and bad medicine. So, on two counts we should have a tough time getting the American Medical Association to endorse a ban on a medical procedure having to do with abortion. But the American Medical Association last year endorsed the Partial-Birth Abortion Ban Act. They stated that it was "not medically indicated."

Let me quote from a group of obstetricians, several hundred across the country, most of them board certified:

The partial-birth abortion procedure, as described by Dr. Martin Haskell, the Nation's leading practitioner of the procedure, and defined in the Partial Birth Abortion Ban Act, is never medically indicated and can itself pose serious risks to the health and future fertility of women.

Four female OB/GYNs were here today to have a press conference, here on Capitol Hill, to talk about partial-birth abortion, and all of them indicated that not only is this not medically necessary, but this procedure, this rogue procedure, is incredibly dangerous to women and to women's health.

So, I go back to the point that I made before. There is enough grounds on its sheer barbarism and the fact that it is an affront to our sensibilities and to our culture that we would allow this kind of horrific procedure to occur. When you compound that with the fact that it is not medically necessary, ever, to protect a woman's health, when you compound that with the fact that it is medically dangerous to women to have this procedure done, and it is always done at an abortion clinic, where there are inadequate facilities to deal with these circumstances promptly if something should go wrong, if you combine just those facts it appears obvious that this procedure should be banned.

So, what I ask my colleagues on both sides of the aisle to do is to do something that is very, very difficult to do here on the issue of abortion. When you mention the word "abortion" on the floor of the U.S. Senate or the U.S. House of Representatives, people dive into their trenches. They dive into their trenches that they feel comfortable with because the last thing you want to do is, during this battle, jump from trench to trench, to try to get to both sides. That is because you end up getting shot at a lot, if you go from what would be considered the pro-life side and try to run the battlefield over to the pro-choice side, or vice versa. So what all the political consultants say is, "Stay in your trenches when you hear the word 'abortion'." That is both sides. "Do not lift your head up because you either get shot by those who you are trying to join or your folks will shoot you in the back."

So let me say, first, to the Members of the Congress, the House and the Senate, for those Members who are "traditionally on the other side of this issue," who are in the other trench, for them to climb out of that trench to face the fire and to stand with us, as they will tomorrow and vote for what they know in their heart is morally, ethically, and medically right, I salute them and I thank them. That is political courage.

You hear a lot of talk these days about political courage. Will we have the political courage to do the right thing with respect to the President? Just let me suggest that there are many Members of this Senate who tomorrow will show political courage and do the right thing. It is political courage to follow your heart, to follow what you know inside you is right, not just right for the children or for the mothers, but what is right for our society and the message we send to all the people listening and watching what goes on here.

For those who have yet to climb out of the trench, I will tell you a couple of things. No. 1, the fire is not that intense once you climb out. The American public overwhelmingly supports banning this procedure. All of the medical evidence that has been out there to support keeping this procedure legal has been debunked and discarded. There is nothing left except zealotry, except this concept that we cannot infringe on this right of abortion—even if, as I would argue, this is not even abortion, as others have argued this is not even abortion once the baby is outside the mother's womb. But we cannot even touch limiting that right.

I would say there is not a right in America that does not have a limit on it. There is not one. Certainly, when it

comes to taking the life of a little baby, we in Congress should be able to muster the courage to put some limit, to draw some line that says "enough."

I would also say that for those to whom I have talked, who have run that gauntlet and come over and voted on this issue to support this ban, there has been communicated to me a great sense of relief and satisfaction that they could break those chains and stand up and do what in their heart they knew was right; what in their conscience they knew was right. So I appeal to your conscience, I appeal to your heart. And I appeal to your reason—I appeal to facts. On every score, on every score, we must override the President's veto.

I see the Senator from New Hampshire is here—I am sorry, I turned my back and he is gone. Let me just say something about the Senator from New Hampshire. The Senator from New Hampshire, Senator SMITH, was the first person to introduce this bill in the last session of Congress. He did so when there was not a whole lot of popular support in the polls for this because the knowledge of the American public was minimal at best. He stood here when the votes were a lot closer than they were today and the public was a lot less informed, and all these lies that I showed to you were all out there being accepted by the press as truth. But the Senator from New Hampshire stood here in the well, armed with what he knew was truth. He stood here and argued and tried to focus the American public's attention for the first time on this gruesome, gristly procedure. He is one of the heroes in trying to bring the consciousness of the people to this Chamber. So I salute him for that. I suspect he will be back in a minute. It gives me the opportunity to talk about a couple of other things.

I want to get back to the moral issue at hand. What we are talking about are babies who are in the 20th week of gestation and later. Now, for most Americans, they have a hard time understanding, "Well, what's the 20th week? What does the baby look like? What are its chances of survival? What are we talking about here?"

At 20 weeks gestation, a normal baby, "healthy" baby, most normal healthy babies delivered at 20 weeks of gestation will be born alive. That doesn't necessarily mean that they will survive. In fact, very few, if any, babies born at 20 weeks will survive. But they will be born alive.

Let me give you some of the statistics we have, if we can get that chart, about survival rates of babies who are subject to partial-birth abortion.

When the Supreme Court came down with the decision on Roe v. Wade, back in the—actually early seventies, but in the late seventies, the information I have, the viability, the time of viability was considered to be around 28 weeks. Babies born before 28 weeks gestation were not considered to be able to be saved. They were not considered to be viable. So much has happened with medical science since that time, and the numbers have changed and changed dramatically.

Let me share with you some numbers from The Journal of American Medical Association. It is an article I referred to earlier, and I will give the citation. It is called "Rationale for Banning Abortions Late in Pregnancy," by Leroy Sprang, M.D., and Mark Neerhof, D.O., Northwestern University Medical School, Evanston Northwestern Healthcare.

Here are some of the numbers that we have used in past debates.

According to a 1987–1988 NIH study of seven hospitals, you can see at 23 weeks, about a quarter of the babies survive; 24 weeks, 34 percent; 25 weeks, 54 percent.

From 1986 to 1994 at Minneapolis Children's Medical Center, 45 percent at 23 weeks; 53 percent at 24 weeks; 77 percent at 25 weeks; and 83 percent at 26 weeks. Remember, these weeks gestation during Roe v. Wade when the decision was decided, all of these were considered zero.

In a Michigan study from 1994 to 1996, you see the numbers—27, 57, 77 and 82 percent.

Let me give you some updated numbers from this report that was published last month:

> Recent data from our institution [at Northwest]. . . indicate a survival rate at 24 weeks—

The second line. A survival rate of 24 weeks of 83 percent—83 percent and at 25 weeks at 89 percent.

Remember, these are all children born at that hospital, some of whom had abnormalities, some of whom had severe problems. They are not all healthy babies being born, and even at that, the survival rate is in the eighties. If you filtered out those who had fetal anomalies who would have died irrespective of when they were born, I suspect this number is substantially higher. So we are performing partial-birth abortions most commonly on babies who would be almost certain to be able to live.

Some people suggest I shouldn't draw that distinction. A baby at 20 weeks, whether the baby can survive or not, is still a baby. I happen to subscribe to that. We draw lines that don't exist in our society about what is life and what isn't. There is no doubt in my mind that when my wife became pregnant with a child, I knew that was going to be a little boy or little girl and there wasn't much doubt that it was going to be a dog or a cat. But we draw lines here as to what is life and what isn't.

Some people feel comfortable drawing lines here. It comes to viability, whether they can live outside the womb. The Supreme Court was one of those entities that did decide that was the place they had to draw the lines, where the rights of the child would increase and the rights of a woman to kill her child would diminish. By not banning this procedure, we allow little children—imagine, most of them, the vast majority, according to the people who perform it, healthy babies, healthy mothers, with very high probability of surviving, who for just one small period of time in the life of that child it is unwanted. For but a moment in the life of a child, that baby is temporarily unwanted by the one person who has absolute control over its destiny.

We read in the paper so much about parents who are seeking to adopt children. There probably isn't a person here in the room who doesn't know someone who has gone to extraordinary lengths, who has waited an extraordinary long period of time to adopt a baby, to love a baby, to accept it, that little gift from God as their own. And yet because for just a moment in time of what could be a long and beautiful life, that baby is unwanted, and because it is not wanted at that very moment in time, its life is taken away.

We are talking about if the mother didn't want to carry the pregnancy to term, if the feeling was, "Well, I just don't want to be burdened with this pregnancy anymore," deliver the baby, give the baby a chance. There is no medical need to kill the baby. There may be medical needs to terminate pregnancy. The doctors today talked about that at their press conference. There may be the need for the health or life of the mother to terminate a pregnancy, but there is never a need to kill a baby in the process of terminating the pregnancy. There is never a need to drag this baby out—a baby that feels pain. In fact, in Great Britain right now the Parliament is considering requiring doctors who perform abortions after 19 weeks to anesthetize the baby because of conclusive research that shows that these babies feel pain. In fact, there are articles that have been written by physicians who say they feel pain more intensely than we do.

I quote again from this Northwestern study that says:

> When infants of similar gestational ages are delivered, pain management is an important part of the care rendered to them in the intensive care nursery. However, with intact D&X—
>
> Partial-birth abortion—
>
> pain management is not provided for the fetus who is literally within inches of being delivered. Forcibly incising the cranium with scissors and then suctioning out the intercranial contents is certainly excruciatingly painful. It is beyond ironic that the pain management practice for an intact D&X on a human fetus would not meet Federal standards for the humane care of animals used in medical research.

We have laws in this country—imagine—we have laws in this country that require us to treat animals—animals—better than we treat these little gifts from God. What is to become of us when we simply cannot see what we do?

I see the Senator from Illinois is here. I have used a lot of time on our side. I would be happy to yield the floor to Senator DURBIN.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, thank you for the recognition.

I thank my colleague from Pennsylvania. Let me say at the outset that my colleague from Pennsylvania comes to this floor to discuss this issue with heartfelt emotion. I am convinced of his commitment to this cause. I have served with him in both the House and the Senate. I would never question his motives. And I know a little bit about his family situation. I am sure that they are sincere.

I also say to you that this may be the most difficult issue for any politician to deal with in America today. I have been in and around public life for 32 years. It has not gotten any easier in 32 years, at least not since the Roe v. Wade decision, because the American people are basically conflicted internally about this issue of abortion.

There are some who would argue no abortions under virtually any circumstances and others who would argue that the State—Government—should not restrict abortions under any circumstances. But the vast majority of Americans, I think personally, fall into some middle ground where they understand that a woman's right to make this decision, in concert with her doctor, her family and her conscience, is something that should be protected under law—it is currently protected under law—but they want to see us do everything we can as a Government and as a people to reduce the likelihood of abortion in this country. The number of abortions have diminished some over the past few years, but it is still a very widespread practice and medical procedure in America.

My own personal views on it—I personally oppose abortion but I believe that we should take care where we draw the line about the Government's involvement in that decision. You would think after serving on Capitol Hill for 16 years, and facing literally hundreds of votes on the issue, that this would become rote, that it would be an easy, automatic, reflexive vote. It has never been that for me. It never will be. I pause and think and worry over every vote on this subject because I know what is at stake is very serious.

Today, the Senator from Pennsylvania comes to the floor and asks us to vote to override President Clinton's veto of his bill banning what is known as the partial-birth abortion procedure. I will be voting to sustain the President's veto. I will be voting in opposition to the Senator from Pennsylvania, but I want to make it clear why I am doing so.

It is my belief that this bill, as far as it goes, addresses one challenge before us. This bill addresses one abortion procedure. But there are many different kinds of procedures. As terrifying and troubling as this procedure is, there are others. And the Senator from Pennsylvania would ban this one procedure, if I am not mistaken, at any stage in the pregnancy. Many of us believe that this issue should be addressed in a different manner.

When it comes to the issue of late-term abortions, allow me to try to explain what I mean when I use that term. In the Roe v. Wade decision—I believe in 1972, if I am not mistaken—the Court, the Supreme Court across the street, divided a pregnancy into three sections, three different trimesters, three different periods of 3 months and basically said in the first two trimesters, the first 6 months of the pregnancy, that they would give the paramount right to the woman to make the decision whether she continued the pregnancy. They made it clear that in the third trimester, the end of the pregnancy, that the State would be able to impose restrictions.

They drew a distinction between that time when the fetus could survive outside the mother's womb and that time when it could not. And if it could not—the previability phase—then they felt that this was more a decision for the woman to make. After viability, that is, the ability of the fetus to survive outside the womb, then the State—the Government—could step in and say, "We will limit the circumstances under which a woman can seek an abortion."

Unfortunately, the bill before us today does not make that distinction. It does not draw that line. I fear it is fatally flawed from a constitutional viewpoint, from the viewpoint of the case of Roe v. Wade which guides us in this debate. As a result, I am not certain that this bill, even if it were enacted over the President's veto, would survive a Court test. I believe the Court has said repeatedly, "We are serious about drawing that line." This particular bill does not draw that line.

Having said that, though, let me tell you that I am not going to engage this debate just on pure legalisms and interpretations of Roe v. Wade. Let me go to the real question before us. Let me try to address some of the points which the Senator from Pennsylvania has made.

I am not a medical doctor. Some Members of Congress are; I am not. When I hear medical doctors say that this procedure, this partial-birth abortion procedure, is never medically necessary, I take that very seriously.

Recently, in the Chicago Tribune, in my home State of Illinois, a professor from, I believe, Notre Dame University, Douglas Kmiec—I hope I am pronouncing it correctly—wrote an article on July 27 in which he quoted a man whom I respect very much, C. Everett Koop, a medical doctor who served as our Surgeon General and who I have worked with closely on the tobacco issue. He quoted Dr. Koop as saying that this medical procedure, this "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility."

As I said, such a statement from a medical doctor, and someone of Dr. Koop's reputation, I take very seriously. As a result, I came back to my office and wrote a letter the following day, on July 28, 1998, to a group which I respect, the American College of Obstetricians and Gynecologists here in Washington, DC. I did not try to color this letter or to influence their reply in any way. I wrote to them and said, "Tell me, is Dr. Koop right? Is this abortion procedure never medically necessary?"

A few days later I received a reply from Dr. Ralph Hale, executive vice president of the American College of Obstetricians and Gynecologists. I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN COLLEGE OF
OBSTETRICIANS AND GYNECOLOGISTS,
Washington, DC, August 13, 1998.

Hon. RICHARD J. DURBIN,
364 Senate Russell Building,
Washington, DC.

DEAR SENATOR DURBIN: I am writing in response to your July 28th letter in which you asked for the College's response to Dr. Koop's statement that "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility."

The College's position on this is contained in the statement of policy entitled Statement on Intact Dilation and Extraction. In that statement we say, "Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother." It continues, "A select panel convened by ACOG could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman." Our statement goes on to say, "An intact D & X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient based upon the woman's particular circumstances can make this decision." For this reason, we have consistently opposed "partial-birth abortion" legislation.

Please find enclosed ACOG's statement on intact D & X. Thank you for seeking the views of the College. As always, we are pleased to work with you.

Sincerely,

RALPH W. HALE, MD,
Executive Vice President.

Enclosure.

ACOG STATEMENT OF POLICY ON INTACT DILATION AND EXTRACTION

The debate regarding legislation to prohibit as method of abortion, such as the legislation banning "partial birth abortion," and "brain sucking abortions," has promoted questions regarding these procedures. It is difficult to respond to these questions because the descriptions are vague and do not delineate a specific procedure recognized in the medical literature. Moreover, the definitions could be interpreted to include elements of many recognized abortion and operative obstetric techniques.

The American College of Obstetricians and Gynecologists (ACOG) believes that the intent of such legislative proposals is to prohibit a procedure referred to as "Intact Dilatation and Extraction" (Intact D & X). This procedure has been described as containing all of the following four elements:

1. deliberate dilation of the cervix, usually over a sequence of days;
2. instrumental conversion of the fetus to a footling breech;
3. breech extraction of the body excepting the head; and
4. partial evacuation of the intracranial contents of a living fetus to effect vaginal delivery of a dead but otherwise intact fetus.

Because these elements are part of established obstetric techniques, it must be emphasized that unless all four elements are present in sequence, the procedure is not an intact D & X.

Abortion intends to terminate a pregnancy while preserving the life and health of the mother. When abortion is performed after 16 weeks, intact D & X is one method of terminating a pregnancy. The physician, in consultation with the patient, must choose the most appropriate method based upon the patient's individual circumstances.

According to the Centers for Disease Control and Prevention (CDC), only 5.3% of abortions performed in the United States in 1993, the most recent data available, were performed after the 16th week of pregnancy. A preliminary figure published by the CDC for 1994 is 5.6%. The CDC does not collect data on the specified method of abortion, so it is unknown how many of these were performed using intact D & X. Other data show that second trimester transvaginal instrumental abortion is a safe procedure.

Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother. Intact D & X is one of the methods available in some of these situations. A select panel convened by ACOG could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman. An intact D & X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision. The potential exists that legislation prohibiting specific medical practices, such as intact D & X, may outlaw techniques that are critical to the lives and health of American women. The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.

Approved by the Executive Board, January 12, 1997.

Mr. DURBIN. Let me speak to the contents of this letter, because I think it is an important letter when we consider the medical debate here—not the legal or political debate but the medical debate.

Dr. Hale wrote to me:

DEAR SENATOR DURBIN: I am writing in response to your July 28th letter in which you asked for the College's response to Dr. Koop's statement that "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility."

Dr. Hale goes on to say:

The College's position on this is contained in a statement of policy entitled "Statement on Intact Dilation and Extraction."

That term, "intact dilation and extraction," is the technical medical term for what we term "partial-birth abortion."

Dr. Hale goes on to say:

In that statement we say, "Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother." It continues, "A select panel convened by [the American College of Obstetricians and Gynecologists] could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman."

The statement goes on to say,

An intact D&X, [partial-birth abortion] however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman . . .

And listen closely,

. . . and only the doctor, in consultation with the patient based upon the woman's particular circumstances can make this decision.

For this reason, we have consistently opposed the partial-birth abortion ban legislation.

He encloses the statement in full.

So what are we to do? Members of the Senate have conflicting medical opinions here. Some medical associations in my home State, some doctors whom I respect, like Dr. Koop, feel that it is never necessary; and the American College of Obstetricians and Gynecologists says it may be the best or most appropriate procedure and only the doctor can decide.

It puts us in a dilemma. Some think it is an easy call—never will we need it; never should we use it. Then you read from the doctors who work with these women who have come upon complications in their pregnancy that they never expected.

When this matter was first debated, I met a woman from a suburb of Chicago, from the Naperville area, who has been kind enough or brave enough to come forward and explain what happened to her. Her situation opened my eyes to the fact that this debate is not as easy as it sounds. She was the mother of a child, pregnant with another child, and had determined through ultrasound that she was about to have a little baby boy. She and her husband had picked out a name. She had painted the nursery. They had bought the furniture. They were ready and expecting parents, only to learn late in the pregnancy that the child suffered from a serious deformity which precluded the possibility that it would survive after birth, and that the continued pregnancy could jeopardize her health or her ability to ever have another child.

I spoke to her about what happened after the doctor made that diagnosis. She spoke of sitting up all night crying with her husband over what they were to do. They did not believe in abortion. Yet what a terrible dilemma they faced. Continue the pregnancy at the risk to her health, at the risk of never having another baby, or terminate the pregnancy of a fetus, a baby—whatever term you use—that could not survive. They made the decision to go ahead with the procedure that would be banned by this legislation.

She told me that story. Then she introduced me to her new baby in the stroller she was pushing. They made the decision to go forward and look to the future with another baby.

I won't presume that everyone listening to this debate would have made that same decision. Others might have seen it quite differently. In her case, she thought she and her husband, with their doctor, did the right thing, and their decision resulted in another baby boy that they are very proud of and happy to have brought on this Earth.

So the belief that many people engage in this procedure for casual reasons—at least in this case—did not apply. We have to take care in this debate that when we ban certain procedures and say doctors can never use them, we apply them to all situations, including the one that I have just described.

Here is what I think we should do. I will vote to sustain the President's veto. I don't know if I will prevail or whether the Senator from Pennsylvania will prevail. But I hope that we can leave this debate without saying that they have had another wild debate in Washington, the issue went unresolved, and they will probably return to that same debate next year—we have done that year after year after year.

A number of us, today, came forward and said that we hoped that we could take this debate to another position, another level, a more constructive level, I hope, after we consider this legislation. I joined Senators in the press gallery today who have agreed to be original cosponsors of legislation which I have introduced. This is legislation that is supported by Democrats and Republicans: Senators OLYMPIA SNOWE and SUSAN COLLINS, Republicans of Maine; Democrats TORRICELLI, MIKULSKI, ROBERT GRAHAM, LANDRIEU, and LIEBERMAN are my cosponsors on this legislation. I hope that in introducing this bill we can move this debate to another level, a different level, and one that is not inconsistent with the philosophy of my friend from Pennsylvania.

What we attempt to do in this bill is say the following: Let us restrict all late-term abortions, regardless of the procedure—whether it uses this procedure or some other procedure—to two specific examples: Situations where the life of the mother is at stake—in other words, if she learned in the seventh, eighth, or ninth month of pregnancy that if she continued the pregnancy she would die; or situations where that same mother learns late in the pregnancy that if she continues the pregnancy she runs the risk of grievous injury to her physical health, like the case that I just described. Those are the only exceptions. No other reasons.

It is not a question of being depressed or changing your mind—as if anybody would make a decision on an abortion for that matter. I don't know that they ever would, but it is specifically prohibited under this law.

And we say that not only the doctor who performs the abortion must certify these medical circumstances, but in addition, a second nontreating doctor must be brought in. He or she must certify in writing that these medical conditions exist. Then and only then could there be any abortion procedure, including this one, in a late-term pregnancy.

We believe this is a constructive and, I hope, promising approach. It builds on an amendment offered last year by Senator TOM DASCHLE, the Democratic minority leader, one that I supported. We have added the second doctor's opinion because criticisms were raised—I didn't agree with them—that the doctor who performed the abortion might make a certification that was dishonest. We think the second doctor's opinion will argue against that.

The penalties involved in this are very serious. A doctor who would ignore the law which we seek to have enacted in the bill which we will introduce today faces a fine of $100,000 for the first instance, and a possible loss of his medical license. In the second case, a fine of $250,000 and the loss of his medical license.

I don't know how you can be more serious than the approach we have taken, to say we want to make certain that late-term abortions are limited to these situations.

Some people have asked, Why don't you just vote for the bill that is before the Senate as well as your own? I cannot do that. The reason I cannot do it is because there is no provision made in the bill offered before the Senate for cases where a woman discovers late in her pregnancy that to continue the pregnancy would present the risk of grievous injury to her physical health. There is a life-of-the-mother exception, but no exception for grievous injury to physical health. That is the reason I will vote to sustain the President's veto. Later today, at the appropriate time, I will introduce the legislation which I have coauthored and described.

Let me say in closing that I respect the Senator from Pennsylvania and his views and I respect those who disagree with him. I believe this debate is a debate over an issue of conscience and one that many of us struggle with on a regular basis. I hope that what we have tried to do today on a bipartisan basis, to suggest an alternative approach, could lead us away from this long-term debate, to a resolution in a fair and humane manner.

I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, if I can take a moment to specifically respond to a couple of things from the Senator from Illinois. I commend him for coming forward and expressing his views. We don't agree, but as is appropriate here in the U.S. Senate, we can disagree without being disagreeable. I respect his right to articulate his viewpoints.

With respect to the letter from the American College of Obstetricians and Gynecologists that the Senator from Illinois read, they did say they:

> . . . could identify no circumstances under which this procedure would be the only option to save the life or preserve the health of a woman.

And they do go on to say:

> . . . however, [it] may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of the woman.

However, no specific examples or circumstances under which an intact D&X would be the most appropriate procedure are given. In fact, they have never been given. They have never put forward any procedure, any circumstance in which they say it may be, but they have never given any hypothetical where it says it would be. That is somewhat troubling, to sort of hang your hat on a possibility when the very organization you are hanging your hat on refuses to give a possibility of whether it meets their definition.

With respect to the constituent in the Senator's State, I can't tell you how sorry I feel for her and for what she had to go through. But, unfortunately, many people in this country do not get the best medical information. One of the things I hope we can accomplish with this discussion—and I think to some degree we have—is to improve the quality of information women get in this country with respect to decisions about pregnancy, particularly late-term, and particularly when it comes to disabled children or children who maybe just aren't perfect.

I just know from all of the information we have been provided from the AMA, from the physicians—and Senator FRIST is going to talk about it from the point of view of a physician—in every case the President cited, including the case the Senator referred to in Illinois, there were other, better alternatives available to her that would have been safer for her to have as opposed to this. It doesn't mean her doctor didn't want to perform this. The doctor may well have. But the fact is, we don't always get the best doctors who give us the best advice. We went to the experts, and what the experts have told us is that this procedure is not the safest.

With that, I yield to the Senator from Tennessee, the only physician in the U.S. Senate, to talk about that very subject.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I rise to really cut through a lot of the emotion and a lot of the rhetoric and really bring together how I view this particular issue. And really I will take very few minutes because, to me, it becomes very clear once the facts are put on the table.

I speak as a U.S. Senator, as someone who understands an obligation to his fellow man, as being a trustee in the U.S. Senate to the American people; but I also want to speak as a physician, one who has spent his entire adult life in the practice of medicine, reaching out to people, being trained at hospitals across this country, exposed to accepted therapeutic procedures, understanding what peer review is about, and to let you know how I assess where we are today.

It really comes down to a single statement, which is as follows: Partial-birth abortion should never—should never—be performed, because it is needlessly risky to the woman, because it is an unnecessary procedure, because it is inhumane to the fetus, and because it is medically unacceptable and offends the very basic civil sensibilities of people all across this country.

Several points. No. 1, there has been this whole myth of how common this procedure is. Let me just say that the procedure is being done today as we speak. Initially, it was billed as being a very rare procedure, that really just a handful are being done, and therefore we don't need Federal legislation. Well, one of the byproducts of this ongoing debate over the last 2½ to 3 years has been that we know this procedure is being performed every day. In fact, we looked at information that has come out and we know that one facility has reported almost 1,500 of these in 1 year. One physician reported doing more than 700 of these procedures, and another, over 2,000 of these procedures. Remember, these are brutal procedures.

A second point. This procedure has been defined on the floor, and it will be defined again, because it is important for people to understand what a brutal procedure this is. But an equally important point is that this procedure poses substantial risk for the mother,

for the woman. It is a dangerous procedure being performed every day on the fringe, outside of mainstream medicine.

It is important for people to understand that this procedure is not taught in any medical school in the United States of America. It is important for the American people to understand that generally accepted textbooks do not even mention this procedure. It is not defined. It is important for America to understand that there are no peer-reviewed, credible studies on partial-birth abortion that evaluate in any way its safety. It is important for the American people to know that our OB/GYN, obstetrics/gynecologic, residencies who train residents to deliver babies in the future do not have this procedure as a part of their curriculum. Why? Because it is dangerous, it is fringe, outside of the mainstream. It has not been evaluated. Yet, it goes on every day, hurting women all across this country.

What are the complications? Well, there are a number of standard complications that occur during a third-trimester abortion. That includes perforation of that organ, the uterus, which contains the fetus. There is a second risk of infection when an abortion is performed in that third trimester. There is a third, and that is of bleeding. But, in addition, because the way this procedure—this fringe, brutal procedure—is performed—and remember, it is performed in a blind way, with the hand inserted into the uterus with scissors thrust up underneath that head and into the base of the skull. That is all done blindly, in a uterus which is large, containing the fetus, which is engorged, has huge blood vessels within a centimeter of where these scissors are blindly being thrust into the base of the skull.

I describe it that way because that is the reality, and the risk is there for this procedure, and it is not for other types of procedures, of laceration, of hemorrhage, of bleeding, of having those scissors nick one of those blood vessels and have the patient suffer. One of the problems is because these procedures are not performed at the Massachusetts General Hospital where I practiced, or Vanderbilt Medical Center where I practiced, or Stanford Medical Center where I practiced, where there is peer review, where people are looking in. And because these procedures are performed in clinics not subjected to peer review, we never hear about those complications. But the complications are there, and hospitals see these patients admitted after this procedure. It is a dangerous procedure. The risks are there to women. Yet, we as an American people have allowed that to occur all across this country.

A third point. This really applies, I think, and enters the field of ethical considerations, which is what we do to the fetus. Remember, the fetus is very far along. This is just prior to delivery of that infant. I want to make this point, and I don't want to dwell on the point, but that taking of scissors and thrusting it into the base of the skull, the expansion of those scissors and the ultimate evacuation of the brain, those contents, is painful to that infant. That infant feels that pain. Thus, it is an inhumane procedure in which no specific pain management is given, and that forcible incising of the cranium, or head, is painful.

Fourth point. This procedure is unnecessary. It is never —never—the only option. According to the Society of Obstetricians and Gynecologists, who will be referred to again and again, "We could identify no circumstance under which this procedure would be the only option to save the life or preserve the health of the woman." That statement is a very important one because it basically says this is an unnecessary procedure.

There will be colleagues to follow—and there will be comments by many of my colleagues—saying, "Yes, that is right. We can't identify any particular circumstance where there is not a safer accepted mainstream procedure that could be used." But I don't like the Federal Government doing anything and saying it is against the law to do any particular procedure, even if you could find it in detail like you have. I don't want them coming in just in the event something will come up.

Again, let me go back. This is a fringe procedure. It is out of the mainstream, not subjected to peer review. We know it is dangerous. There are always alternative procedures available.

It is a common procedure performed frequently. It is a dangerous procedure—dangerous to the woman. It is an inhumane procedure thrusting those scissors into that fetus' head. It is an unnecessary procedure. Never is it the only option. Alternative procedures are always available.

Over the last couple of years as I have studied this issue, a lot of things have been made apparent to me. We need data collection. We need peer review of these sort of fringe procedures that are performed outside of the mainstream.

There has been, I believe, extraordinary medical consensus that has come forward. It was difficult 2½ or 3 years ago, because physicians who are trained in our 125 academic and medical centers and medical schools have never been exposed to this procedure. It is only the fringe physicians in clinics outside of the major hospitals doing the procedure. Most people didn't know what a partial-birth abortion was. We have educated physicians. We have educated people in the health care arena. And, as a product of that, there has been this extraordinary medical consensus that has emerged.

Yes, on the floor you can always hear people who stand up and say, "We are against the Federal legislation because it infringes on our right to make decisions about our patients." They don't come out and defend the procedure.

We need to come back again and again and recognize that this is not a debate about pro-life, or pro-choice, or abortion to me in any way. Because of the way the bill is written, it focuses very narrowly on a specific procedure that is unnecessary.

Mr. President, I look forward to coming back and continuing our discussion. I know we have a number of people on the floor who want to speak on this particular issue.

But let me just close with one final comment before turning back to the Senator from Pennsylvania and the Senator from New Hampshire, who have done an outstanding job in terms of leadership, and say once again that partial-birth abortion should never be performed because it is needless risk, it is inhumane, it is ethically unacceptable, and it is totally unnecessary.

Mr. SANTORUM. Mr. President, I thank the Senator from Tennessee for his expert witness testimony here on the floor of the U.S. Senate. We are fortunate to have an expert in the area of medicine to provide us with this kind of information. I, very much, appreciate his willingness to come forward and speak so intelligently and forcefully on this issue.

I also thank the Senator from New Hampshire, who has been very patient letting the Senator from Tennessee and now the Senator from North Carolina, Senator FAIRCLOTH, be recognized for 5 minutes.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Thank you, Mr. President.

Mr. President, it saddens me that we are here again debating partial-birth abortion. I feel inadequate at this point after hearing Dr. FRIST give a thorough, methodical, and definitive reason why it is such a cruel and brutal procedure that it never even should be considered. How anybody could vote to sustain a veto after hearing Dr. FRIST, Senator FRIST, explain the brutality and the fringe element that is doing this procedure is more than I can imagine.

There are 125 medical centers and schools in this Nation, and not one of them teaches the procedure as a method of medicine. It is totally a fringe element, as he well says.

I feel so inadequate here following him, who is an authority, and spent his life in medicine, and understands the medical reasons why we should not be doing it.

But the very idea of just taking a pair of scissors and driving them into the skull of a child that is practically ready to be born, to me is horrible beyond anything we can think of—the

pain to the child, and the danger to the mother. It is absolutely incomprehensible to me how anyone could vote to continue this procedure.

It was said by Dr. FRIST that it is done by a fringe element, but they are doing a lot of them. They are not even taught by medical doctors in medical schools. Yet, we are here authorizing it.

Again, how many times will President Clinton stand in the way of the Congress and to overwhelming feelings of the people of America and veto our attempt at outlawing this horrible procedure?

For me, this is about values, our values. It is one of the great moral questions of our time. It is a moral question. We know that late-term abortions are wrong. We know it from everything we are taught—from our religious beliefs, to our medical authorities, which we just heard. We need to summon the moral courage to draw a clear line of conscience by saying simply flat and straight out, "no more partial-birth abortions," not just from the facts that we heard from Senator FRIST, but just the overall facts. The American Medical Association says that partial-birth abortions are medically unnecessary. That one statement is true is enough to outlaw this procedure. But it actually is not even done in the medical profession. It is a fringe procedure that goes far outside the normal circles of medicine.

Former Surgeon General Everett Koop said partial-birth abortions may harm a mother's fertility. We hear from other segments of the American medical society that it probably will harm a mother's fertility. Spiritual leaders from every segment of religion in the country—religious leaders such as Billy Graham, Pope John Paul—have spoken out on the horrible procedure that this is and how it should be eliminated from our society forever and outlawed forever.

We are talking about taking the life of a child who can survive outside the mother's womb. We just heard Senator FRIST describe it can survive, and how that life is taken by the cruel process of pushing a pair of scissors into it and expanding it and removing the brain.

It is a horrible procedure. Both pro-life and pro-choice should be able to agree that those children deserve our law and protection.

I am asking my colleagues—and, most importantly, President Clinton—to put values ahead of votes and end the tragedy of partial-birth abortion.

Thank you, Mr. President. Mr. President, I yield any time I may have.

Mr. SANTORUM. Mr. President, the Senator from California is here, and she said she is not quite ready so we will proceed with another speaker. The Senator from New Hampshire has been very patient. I yield to him such time as he needs.

The PRESIDING OFFICER (Mr. GORTON). The Senator from New Hampshire.

Mr. SMITH of New Hampshire. I thank the Chair. I thank the Senator for his leadership.

I wish to start my remarks by saying what an honor and privilege it is for me to stand here on the Senate floor with such distinguished colleagues as Senator FRIST, Senator FAIRCLOTH, Senator SANTORUM and others who have spoken out so eloquently against this terrible practice that takes place, unfortunately, too many times in the United States of America.

I was particularly impressed with the remarks from our distinguished colleague, Senator FRIST, who today I think is more important as a doctor than as a Senator perhaps, listening to his very impressive and technical remarks about just exactly what this procedure is and how it is not necessary for the health or the life of the mother, to save the life or to enhance the health of the mother, and he noted, as has been said, the fringe element who perform these horrible procedures.

In addition to that, I would just mention that here in this notebook—Senator FRIST you heard from. He had a press conference this morning with four distinguished physicians, obstetricians and gynecologists, who spoke out saying the exact same thing that Senator FRIST said. Here in this book are 180 letters. These are just the ones I have received in my office. These are from all the doctors who say that it is unnecessary to save the life of the mother or to enhance the health of the mother—180. I am sure there are many other Senators who have received similar correspondence saying exactly the same thing.

But having been involved for almost 4 years now in this debate, coming to the floor, fighting your heart out, losing, it is pretty tough, and it is very emotional. And I know it has been the same for my dear friend and colleague, Senator SANTORUM of Pennsylvania, who has poured his heart and soul into this issue.

I remember very clearly, and I am sure the Senator does as well, in 1995, when I was pretty much alone on the floor of the Senate—and I want to get into that a little bit in a moment as to why I was here—there was a newly elected Senator, fairly newly elected Senator from Pennsylvania named SANTORUM who was not saying anything but listening to the debate. There was a very emotional exchange privately between the Senator and myself. He just indicated to me that he had to get involved in this because of the horror of it, and he has. He has been a great leader, and I certainly appreciate another horse in the harness, so to speak.

This is beyond, I should say, the in-your-face politics that we have endured on the floor in the past. I know I have gotten beyond it. I don't want to get into anybody's face on abortion or partial-birth abortion. I want to get in your heart. I want to get in your hearts because that is what this is about. I know that as we debate on the floor you don't see a huge crowd here. Hopefully, somebody is watching on the monitor. Of that 36 out there who have yet to see our way, maybe somehow, some way, some will see that it is wrong to continue to tolerate this in America and their votes will change, at least enough votes will change to end this horror.

This is America, supposedly the moral leader of the world. What does it say to our children when we kill children, their colleagues, with a pair of scissors and a suction hose as they exit the birth canal? What does that tell them? How do you say to your children, "Be good today; do your homework; mind your parents; do what's right; live a good life; be a good Christian; do unto others; be good"—how can you say that and support this? What message are you giving them?

No one should be surprised about the immorality that we see in our country today because we are not setting the example. We have an awesome responsibility as leaders in this country, whether we are in the Senate or whether we are just ordinary parents every day setting an example for our children. It is an awesome responsibility.

I remember when I spoke in the Chamber 3 years ago, I was chastised by a colleague for showing those same medical charts that Senator SANTORUM has shown in front of young pages sitting in the well. Well, I think they had to see that. I think they needed to know what we as adults are doing to their younger colleagues, the unborn children who have done nothing against anybody. This is the execution of a child as it enters the world. You cannot color it up. You cannot make it any nicer.

You can talk about all the legalities. I heard my colleague, Senator DURBIN from Illinois, a few minutes ago say we had to follow the guidance of Roe v. Wade. I might change that slightly and say the misguidance of Roe v. Wade. This is not about technicalities. It is not about legal definitions. It is not about falsely creating definitions of what threats to health or threats to life are. This is about real children really dying every day as we speak. As this debate occurs, more will die, and we are letting it happen. And three votes in this Chamber tomorrow morning, three more than we had the last time, will end it all, will stop it. So when you think about whether your vote counts, whether it matters, my colleagues, it matters. It matters.

I stood in the Chamber 3 years ago. Initially, I didn't know what this was. I could not believe that anything that

would even resemble a so-called partial-birth abortion would occur in this country. I didn't believe it. So I checked it out. I talked to people who actually assisted and performed them. I took the charts. I came down in the Chamber. I held up the same medical doll that four doctors held up in a press conference today. I showed exactly what happened with a medical doll—not a plastic fetus, as the critics in the press like to call it, but a medical doll. I simply showed the same size as a real child, the same size as that child who is being held by the abortionist, to simply show what happens.

I said then and I will say now, in any community in America—you pick it, you name it, your hometown, wherever it is—if you picked up your hometown paper tomorrow and in that hometown paper it said all the puppies and cats in your local humane society were going to be killed with no anesthetic, with a scissors to the back of the skull, open the skull and insert a tube to suck the brains out, I think you would probably be pretty upset. And you know what? It would probably be stopped. It probably wouldn't happen. But it is happening to children and we are letting it happen right here, tomorrow, on the floor of the U.S. Senate unless three Senators have the courage to put the politics aside and change their vote.

When I came down here in 1995, I had one cosponsor because, frankly, people didn't know what this was. Senator PHIL GRAMM of Texas was an original. We have come a long way since then, and we are not there yet. When the partial-birth abortion ban first passed the Senate on December 7, 1995, it did so with the support of 54 Senators. When the Senate voted whether to override President Clinton's veto on September 26, 1996, 57 Senators voted, and when the Senate passed H.R. 1122, on May 20, 1997, 64 Senators voted in favor.

You see, in here it is a numbers game. It is a game of numbers. But out there every day in those abortion clinics, it is a life game. It is a little child that is being killed for no other reason, other than it is not wanted. That is the reason.

I, as I total up those thousands, and I think about it, I ask myself how many times have I said this, night after night, as I thought about the horrors of this—how many of these children may have grown up to be a physician? Maybe a chaplain? Maybe a President? Maybe a scientist, to cure cancer?

Jefferson wrote so eloquently the Declaration of Independence that we have "the right to life, liberty, and the pursuit of happiness." You cannot have liberty, you cannot pursue your dreams, if you are killed before you are born. I do not often quote from the Bible, but you reap what you sow, and we will reap what we sow if we do not end this practice in America.

When the historians write about this age and this era—and I am standing right now at the desk of Daniel Webster. I think about it every time I speak. It is the only original desk in the Senate. There was a resolution passed in the 1960s that said for now and ever more, this desk belongs to the senior Senator from New Hampshire. Nobody else will ever get it. That is one of the highest honors that anybody could ever have.

But the point I am making is we are here for only a short time. Webster occupied this desk. It did not belong to Webster, and it does not belong to me. It belongs to the people of New Hampshire and the people of America. The years will go by and the historians will look back, just like they look back on Lincoln and the Civil War, and they are going to write about this era. I know one thing, Senator SANTORUM, we are on the right side. History is going to judge us as being on the right side, I promise you that. Don't worry about it. It is a done deal. We are on the right side, for the same reason that Abraham Lincoln was on the right side.

Can you imagine Abraham Lincoln taking a poll on whether or not we should end slavery? Putting his finger to the wind and trying to decide what the politically expedient thing to do is, to end slavery? Could you imagine Patrick Henry taking the floor of the Virginia Assembly and saying I wonder if these folks want liberty or whether they want death? Maybe I ought to poll them before I make this speech.

Those were men of principle. Those were men of principle. They were not afraid of the political ramifications. When Patrick Henry said "Give me liberty or give me death," he meant it. He was prepared for death if he could not have liberty. He meant every word of it. And Lincoln meant every word of it when he said slavery was wrong and it was immoral. And I mean every word of it when I say that this is wrong and this is immoral, and we will be judged on the basis of this vote. We have the chance to override the veto and send a powerful message.

Today, 3 votes short, 67 votes. There have been a lot of facts presented here today and there will be more, probably, before the day is over. Take a fresh look, I ask my colleagues. I beg you. Examine your consciences. This is a huge conscience issue.

I believe the reason we have made so much progress towards our goal of outlawing partial-birth abortion is that more and more Senators are realizing that the opposition to this bill was built on a foundation of lies—lies. I do not use that word lightly. I am using the very word that one of the Nation's leading abortion industry lobbyists used, Ron Fitzsimmons. He has been quoted here earlier, but he publicly admitted last year that he "lied through [his] teeth" when he helped orchestrate the campaign against partial-birth abortion.

When I stood on the floor here, I was told that there were just a few dozen a year, that I was some kind of an extremist, a radical. President Clinton, Vice President GORE, Mrs. Clinton, came to New Hampshire in 1996 and campaigned against me in the last week of the election on this issue.

In an interview published in the New York Times on February 27, 1997, and in an article published in the American Medical News on March 3, 1997, Fitzsimmons made the surprisingly candid admission that he had "lied" when he claimed that partial-birth abortions are rare.

In those same interviews Fitzsimmons also conceded that he "lied" when he claimed that partial-birth abortions are performed only on women whose lives are in danger or whose unborn children are severely disabled. "It made be physically ill," he told his interviewer. "I told my wife the next day, 'I can't do this again.'" A man of conscience. In seeking to justify his veto of the Partial-Birth Abortion Ban Act last year, the New York Times points out, "President Clinton echoed the argument of Mr. Fitzsimmons." In other words, in justifying his veto, Mr. Clinton relied on the same statements of "fact"—or wrong facts—that have now been conceded by a key leader of the abortion industry to be "lies."

In summary, the President used Fitzsimmons' argument; Fitzsimmons was lying, and the President should change his position. If the President of the United States, tonight, would say to his colleagues in the Senate, "I was wrong, override me," imagine the impact that would have on this Nation.

Regarding the President, I called upon the President a couple of years ago with a personal, handwritten note, to meet with me, to meet with my colleagues privately, publicly, any way he wanted to; on the record, off the record, with doctors, with his doctors, with my doctors—any way he wanted, any location, any way, any how, any shape or form, to discuss this issue so I could present, in 5 or 10 minutes—that's all I asked for—what I believe to be the truth and to show where he was being told things that were wrong. He never answered my letter. Never answered my letter.

Let me repeat it tonight, Mr. President, and I think I speak for Senator SANTORUM. We would love to come over and talk to you tonight about this. We will bring our doctors. You can have all of yours. I appeal to you to take me up on this. What have you got to lose? Maybe you will agree with us. If you do, you can ask your colleagues in the Senate to change their votes.

The truth, Mr. Fitzsimmons told the New York Times, is that "[i]n the vast majority of cases, the [partial-birth

abortion] procedure is performed on a healthy mother with a healthy fetus that is 20 or more weeks along." Five months. And, as Mr. Fitzsimmons told the American Medical News, "[t]he abortion rights folks know it, the anti-abortion folks know it, and so, probably, does everybody else." Except, Mr. Fitzsimmons might have added, for President Clinton, who vetoed this bill, even though the reasons he gave to justify his previous veto had turned out to be lies.

Mr. President, following Mr. Fitzsimmons' startling revelations, on March 4 the Washington Post ran an unusually blunt editorial entitled, "Lies and Late-Term Abortions." After recounting Mr. Fitzsimmons' lies and his candid admissions that he lied, the Post editorial drew the final conclusion:

Mr. Fitzsimmons' revelation is a sharp blow to the credibility of his allies. These late-term abortions are extremely difficult to justify, if they can be justified at all. Usually pro-choice legislators such as Senator Daniel Patrick Moynihan and Representatives Richard Gephardt and Susan Molinari voted for the ban. . . . Opponents of the ban fought hard, even demanding a rollcall vote on their motion to ban charts describing the procedure from the House floor. They lost. And they lost by wide margins when the House and Senate voted for the ban. They probably will lose again this year when the ban is reconsidered. And this time, Mr. Clinton will be hard-pressed to justify a veto on the basis of misinformation on which he rested his case last time.

Please listen, Mr. President. Please listen to those words.

When the President vetoed H.R. 1122, he did so on the same discredited basis that he used before. Partial-birth abortions, he said, are "sometimes necessary to preserve the woman's health."

That is a false statement. We have had doctor after doctor say it. We had Dr. FRIST say it on the floor, and we have had other testimony, and, as I said, 180 letters from other physicians saying it as well.

Mr. President, President Clinton's assertion that partial-birth abortions are sometimes needed to protect a woman's health, again, is not true. Even the AMA, who has been quoted today, has said that. The American Medical Association said in the New York Times, May 26, 1997:

The partial delivery of a living fetus for the purpose of killing it outside the womb is ethically offensive to most Americans and physicians. Our panel could not find any identified circumstances in which the procedure was the only safe and effective abortive method.

In other words, as Senator FRIST has said on the floor, it is a fringe element that performs that.

There you have it, Mr. President. My colleagues can take a look at these choices: On the one hand, the claim by the President that partial-birth abortions should remain legal because it is needed to protect a woman's health; on the other hand, the American Medical Association, which is, by the way, pro-choice, saying that partial-birth abortions should be banned because it never was needed to protect a woman's health. I will take the American Medical Association on this one.

Aside from the Fitzsimmons revelations and the AMA's dramatic decision to support H.R. 1122, I believe another reason why the partial-birth abortion ban continues to attract greater and greater support in the Senate is that Senators are coming to realize that this issue really does transcend abortion. I never made any secret about my position on abortion. All abortions are wrong. I am speaking for myself. They all are a taking of a human life, and they are all wrong, which is why I have introduced a human life amendment to the constitution of the amendment. I am proud of it. I don't care if I only get five cosponsors. I am proud of it. I stand on that record, and I think I will be judged correctly for having introduced it, whether I get any cosponsors or not.

Indeed, as one Senator, Senator MOYNIHAN, who supported us on the veto override in the last Congress, put it, partial-birth abortion is "too close to infanticide." Let me go one step further, and it has been said here, it is infanticide. All abortion is wrong, but this is not abortion. This is infanticide. This is taking a child in your hands and executing it.

We need to move away from the partisan rhetoric—not partisan, but the rhetoric on the pros and cons whether the pro-life community or the pro-choice community supports this; get away from that and look into your hearts. It is never too late to change your position on something. I have done it, and others have in here, I am sure. This was a pretty stark, truthful way to put it by Senator MOYNIHAN, Mr. President. It took courage for him to say it, and I commend him for it. It takes a real person with a lot of courage and a lot of guts to say he was wrong and change his vote.

Another Senator who didn't support the bill the first time around also joined us on that override, Senator ARLEN SPECTER, who believes, he says, that partial-birth abortion is more like infanticide than it is abortion. Senator SPECTER said it on the Senate floor September 26, 1996:

In my legal judgment, the medical act or acts of commission or omission interfering with, or not facilitating the completion of a live birth after a child is partially out of a mother's womb constitute infanticide.

I stood on that Senate floor in 1995 with Senator SPECTER arguing with me heatedly and differing with me. To Senator SPECTER's credit, he studied it, he looked at it, and he had a change of heart. Again, that takes courage. The line of the law is drawn, Senator SPECTER said:

When the child is partially out of the womb of a mother, it is not an abortion, it is infanticide.

When you hear about this being an abortion to protect the health of the mother or the life of the mother, how does it help the health or life of the mother to restrain a child from being born, holding it in the birth canal, head only, until it is killed? No doctor has told me yet how that enhances the health or the life of the mother.

Those are strong words from Senator SPECTER, a pro-choice Senator. It took a lot of guts for him to say it, but he said it.

We are picking up support in the Senate. As I have argued today, more and more Senators are realizing that the case against this bill is on a foundation of what have now conceded to have been "lies."

We are also picking up greater and greater support because more and more Senators are realizing that this issue transcends abortion—that the tiny little human being whom we are talking about is a partially born baby who is just inches from drawing her first breath.

To those Senators who are still considering joining the ever-increasing majority of Senators who support the Partial-Birth Abortion Ban Act, let me address a few more comments to you. Perhaps the Nation's most respected and revered doctor—"America's Doctor"—is the former Surgeon General of the United States, C. Everett Koop. I am particularly proud of Dr. Koop because he is a part-time resident of my home state of New Hampshire.

This is what Dr. Koop has to say: "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility. On the contrary, this procedure can pose a significant threat to both her immediate health and future fertility."

We all know that Dr. Koop is not a man who uses words lightly. On the contrary, Dr. Koop is a doctor who chooses his words with care and precision. Listen to those words again: "Partial-birth abortion is never medically necessary to protect a mother's health or future fertility."

Now, of course, Mr. President, as I mentioned earlier, even the American Medical Association, which is "pro-choice" on abortion, has endorsed the Partial-Birth Abortion Ban Act. So, my colleagues, if you are worried about protecting women, listen to the words of Dr. Koop and listen to the American Medical Association. They are for the Partial-Birth Abortion Ban Act because partial-birth abortion is never necessary to protect a woman's health.

In addition, Mr. President, I urge my colleagues who are still undecided about this bill to look at it in light of our beloved Nation's history. We all know those beautiful and majestic words that Thomas Jefferson wrote for

our Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

Mr. President, one does not have to agree with my view that human life begins at conception to see that a living baby who is in the process of being born has, in Jefferson's words, been endowed by her Creator with the unalienable right to life. Can anyone seriously doubt where that great American, Thomas Jefferson, would stand on that question?

Another of America's greatest leaders, Abraham Lincoln, made one of the most dramatic and prophetic statements of his life in a speech that he delivered on June 16, 1858. In that speech, Abraham Lincoln said "I believe this government cannot endure permanently, half slave and half free." Today, Mr. President, as we debate this Partial-Birth Abortion Ban Act in this great Capitol of the Union that Lincoln saved, I would say this: The moral foundation of this government cannot endure permanently when even the half born are not free to live. Can anyone really doubt where that moral giant, Abraham Lincoln, would have stood on the question before us here today?

Let us rise to the moral level to which our Nation's history calls us. Let us recognize the unalienable, God-given right to life of the partially-born. Let us protect the partially-born from a brutal death. Let us be worthy of the Nation that Jefferson helped create and that Lincoln surely saved. Let us pass the Partial-Birth Abortion Ban Act with a two-thirds' majority and thus override President Clinton's unconscionable, immoral, and dishonest veto of this bill.

I was honored when, in 1996, the National Right to Life Committee recognized my work in the Senate on behalf of the Partial-Birth Abortion Ban Act by presenting me with its "Proudly Pro-Life Award" at a banquet at the historic Waldorf-Astoria Hotel in New York City. The most memorable moment of the evening, however, was not when I received the award. Rather, it was when I heard Gianna Jessen sing.

Gianna Jessen is a beautiful young woman whose life was nearly ended before she was born. Gianna's teenage biological mother had her aborted in the final three months of pregnancy by the so-called saline solution abortion procedure, but Gianna miraculously survived.

Though she survived the abortion attempt, Gianna weighed just two pounds at birth and was afflicted with cerebral palsy. She spent the first few months of her life in a Southern California hospital. Though her doctors doubted that she would ever be able to sit up, to crawl, or to walk, after years of physical therapy and surgeries, Gianna, now 21 years old, today enjoys an active, productive, and happy life.

As Gianna Jessen stood before the crowd at the Waldorf-Astoria that night and sang "Amazing Grace," there was not a dry eye in the house—including mine.

In July of this year, a media report reached my office about the first known survivor of an attempted partial-birth abortion. According to the Associated Press and other media accounts, personnel at the A–Z Women's Center in Phoenix, Arizona, told a 17-year old mother that her unborn baby was between 23 and 24 weeks' gestational age (in other words, between 5 and 5½ months).

Reportedly, after beginning the partial-birth abortion procedure, abortionist John Biskind found himself dealing with a 6-pound, 2-ounce baby girl of about 37 weeks (near full term), and he delivered her alive. She was kept in the hospital with a fractured skull and "two deep lacerations" on her face, but no brain damage.

When I learned about this baby, who pro-life activists call "Baby Phoenix," I immediately thought of Gianna Jessen. How wonderful it is that Baby Phoenix will now be able to grow up in this great country of ours. She may some day stand in front of a pro-life dinner and sing "Amazing Grace." She may become a scientist and help find a cure for cancer. She may become a United States Senator. She may become the first woman President of the United States. She may become a Supreme Court Justice and vote to overturn Roe v. Wade. With life, anything is possible. I praise God that Baby Phoenix lives.

The case of Baby Phoenix, the first known survivor of an attempted partial-birth abortion, illustrates that we are dealing with real human beings here. For Baby Phoenix, once that partial-birth abortion procedure was started, all that stood between her and a full life was an abortionist. In his hands, he held the power of life and death.

Thankfully, Mr. President, the abortionist in Baby Phoenix's case, John Biskind, had a conscience. He saw that he was dealing with a little human being—all 6 pounds and 2 ounces of her. And he didn't brutally punch a hole in her skull. He didn't take a suction device and remove her brain. He didn't kill her. He let her live.

Unfortunately, Baby Phoenix is the only known survivor of an attempted partial-birth abortion. All the other abortionists who perform the partial-birth abortion procedure don't have the conscience of John Biskind. They, too, know that they are dealing with little human beings. They manipulate their little living bodies. They feel those tiny babies move. Then, with unspeakable brutality, they forcibly restrain those little babies from being born, brutally poke scissors into their little skulls, and then literally suck the lives out of them.

Today, we can put a stop to the unspeakable brutality of partial-birth abortion. Two-thirds of the United States House of Representatives has said "Yes, stop partial-birth abortion." The American Medical Association has said "Yes, stop partial-birth abortion." President Clinton has said, "No, I want partial-birth abortion on demand to be legal." Today, the United States Senate can say to President Clinton, "You are wrong."

I plead with my colleagues. Listen to two-thirds of the House of Representatives. Think about Baby Phoenix. Listen to the American Medical Association. Don't listen to the cravenly political deceptions of President Clinton.

Vote your conscience. Vote your heart. Vote to stop partial-birth abortion. Vote to override the President's veto and let the Partial-Birth Abortion Ban Act become the law of this land. We will be a better country for it.

I can go on, Mr. President. I know there are lots of other things that I can say, but I will close at this point in the debate by again reminding my colleagues to separate yourself from the heated exchanges that we have all had. I see the Senator from Nebraska on the floor. We have had a couple of exchanges in the past on this issue. But try to look into your hearts and see if we can't get out of each other's faces and into each other's hearts and see if we can't get three more votes to change this horrible procedure.

I yield the floor, Mr. President.

The PRESIDING OFFICER (Mr. GORTON). The Senator from California.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KERREY. Mr. President, I yield such time——

The PRESIDING OFFICER. The Senator from California controls time. Does the Senator yield to the Senator from Nebraska?

Mrs. BOXER. I do, as much time as he may consume.

Mr. KERREY. Mr. President, first of all, in the spirit of the suggestion made by the distinguished Senator from New Hampshire and earlier, as well, by the Senator from Pennsylvania, I reached my conclusion as to what our law ought to be. This is unquestionably a decision that required not just a considerable amount of research about what our laws and our Constitution permit us to do, but also a considerable amount of soul-searching.

In Nebraska, there are many people—friends, family and people whom I do not know—who have offered their prayers for me during this deliberation. Before I offer my own words as to why I believe the law as proposed is both unconstitutional and incorrect, let me

say that I very much appreciate those prayers. I have offered them myself on this particular issue. I have had a career now of some 14 years serving the people of Nebraska and have told them almost from day one that though I may sound from time to time as if I am absolutely convinced on an issue, I have never, if the evidence proves otherwise, been unwilling to change my position.

I say to my colleagues, I nearly did so in this case, on account of very good friends who were urging me otherwise, on account of the prayers and concerns and the good wishes that were extended to me by people in Nebraska.

Mr. President, abortion is a choice a woman makes and, at least in my limited conversations with women who have had to make that choice, is a decision that produces a considerable amount of grief, a feeling that something has been ended no matter at what stage, whether it is done in the first week or whether it is done in the 15th week. No matter when it occurs, it produces a considerable amount of grief. Even when the termination is spontaneous, when it is a spontaneous abortion, a miscarriage, there is a sense of loss. Something has happened that was unanticipated. The idea of something good happening has been interrupted by something that is, to the woman's mind anyway, bad.

It is very important, it seems to me, to begin with that understanding. I was very moved, I must say—in fact, I told the distinguished Senator from Pennsylvania—by an article not long ago about the struggles he and his wife endured. It was a very moving piece. It does, I think, something that very often is missed by the public—this comment is unrelated to this particular debate—it shows the human side of our Members. It is unfortunately true that people often see us through our positions, through the positions we have taken, our identity as a Democrat, a Republican and they form an impression. Sometimes we love you, sometimes we hate you, just based upon that position. I appreciate very much the willingness of the Senator from Pennsylvania to allow that story to be told because it shows the human dimension of this issue, and the grieving and the terror and the soul-searching that does occur.

I say that, Mr. President, because one of the things that needs to be understood is, the law does not direct women to make this choice. It merely gives them the choice, the opportunity to make this decision. It does not make the decision any easier, it does not make the decision free of soul-searching and prayer, and, again, from my experience in talking with women who have made this decision, it does not produce a feeling that they have just done something wonderful. Indeed, some of the most powerful people in opposition to a woman's right to choose, to the current law, are people who have gone through this procedure. So people need to understand that we begin by extending our prayers, not just to us lawmakers, but to people who are going through this decisionmaking process.

What we have attempted to do over the course of this debate is to balance the rights of the woman who is carrying the fetus and the fetus itself—not an easy debate. The Senator from New Hampshire again makes a case, I believe, that abortion in all circumstances should be illegal. It is very moving, and I am impressed by his passion and the commitment to this issue.

But in the process of trying to settle this debate, Mr. President, we have been given guidance by the U.S. Supreme Court, and the guidance of the Supreme Court in both the decision known as Roe v. Wade and the decision known as the Casey decision in Pennsylvania. The language of these decisions needs to guide this Congress and needs to guide the American people in drafting legislation, drafting laws that determine how we are going to balance those rights. Otherwise, you should come as, again, the distinguished Senator from New Hampshire has said he would like to come, and change our Constitution. He wants to change the Constitution so the Supreme Court can reach a different decision than they did in either the Roe v. Wade decision or the Casey decision.

Again, Mr. President, I am coming to the floor very mindful of the wishes and prayers of many people in Nebraska who have listened and heard this procedure described. And they say, "It's awful. How can you allow it to go on under the law?" And I am going to describe how I reached the conclusion that this piece of legislation would be, I believe, both unwise and, I believe, unconstitutional.

First of all, listen to the language—first the language of the decision in 1973:

> For the period of pregnancy prior to this compelling point [that is the moment of viability; approximately 24 weeks into pregnancy], the attending physician, in consultation with his patient, is free to determine, without regulation by the State, that, in his medical judgment, the patient's pregnancy should be terminated. If that decision is reached, the judgment may be effectuated by an abortion free of interference by the State.

That is us. That is what we do with our laws; we determine whether additional laws need to regulate this decision.

Again, going on:

> With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability . . .

I emphasize that. Very often I will hear people who are pro-choice advocates say, "Well, why are you doing this at all?" The Court did say there is a legitimate interest. The Court did provide us guidance as to how we can pass laws and restrict this type of health service. There are instructions that enable us to, if we wanted to. We could write legislation that followed this guidance. I will get to that point later:

> This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe [prevent] abortion during that period, except where it is necessary to preserve the life or health of the mother.

Those are the instructions. And I am willing to vote, and have in the past, to place restrictions, to proscribe, and say that abortions cannot be done if the life or the health of the mother is not at stake. That is what the Court has said. And in many instances there have been challenges brought by people who have different views and say the Constitution does not provide that right.

Again, most recently, in Planned Parenthood v. Casey, the Court confirms:

> Roe's essential holding, the holding we reaffirm, has three parts. First is a recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State. Before viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure. Second is a confirmation of the State's power to restrict abortion after fetal viability, if the law contains exceptions for pregnancies which endanger a woman's health.

So again, Mr. President, the Court has held—they have heard the arguments, and they have come back and said yes, to those who say that Government should not be engaged at all in writing laws, the State does have a legitimate right to proscribe abortions after viability. Again, I emphasize, I have voted for such restrictions.

But the Court has held that there must be a protection for the woman's right to choose if either life or health are at stake. That is the language of the Court. That is what the Court has said under challenge from those who believe that the Court erred in its judgment in 1973.

Thus, when the AMA comes and argues that this procedure should be banned, I give them heavy weight, substantial weight. But I have as well to give substantial weight to the Constitution and those who are interpreting that Constitution on our behalf, the U.S. Supreme Court.

We should attempt, when we write laws governing abortion—for those of us who believe that a woman should have the right to make a largely unburdened decision, burdened only by her own conscience, which is substantial; I say it again for emphasis, I am troubled very often in this debate that an insufficient amount of attention is

paid to the grieving, to the suffering, to the difficulty that a woman faces at this particular moment and afterwards—to balance the rights of the woman against the right of the fetus. That is what we should do. We should write a piece of legislation that keeps a constitutional balance in place.

Mr. President, I believe this particular piece of legislation fails that test. It might, indeed, be a useful exercise, but it is going to be thrown out. It is going to be thrown out, Mr. President, because it does two things that the Court has said repeatedly are unconstitutional.

First of all, let me just read the language, Mr. President. It is a fairly short and clear description of what the proponents would like the law to be. It says that:

Any physician who, in or affecting interstate or foreign commerce, knowingly performs a partial-birth abortion and thereby kills a human fetus shall be fined under this title or imprisoned not more than two years, or both.

That brings the State into it, obviously. The doctor could be fined or placed in prison as a consequence of doing this procedure in all States. It gives a right of legal action to the father. It gives a right of legal action to, I believe, the woman s parents as well. It gives the State the right to come in and bring a case against that doctor—but not, Mr. President, only post-viability.

The language of this law does not reference either Roe or Casey. It does not say that this would apply only post-viability; it applies in all cases. And though it is quite true that many, as I understand it, of these procedures are done post-viability—and, by the way, there are many other procedures that are done, most of which, as they have been described to me, are equally grizzly and therefore difficult, on a personal basis, to sustain the argument that this is a good thing to do—many are done before viability. But the Constitution says that we are to provide that woman with an uninhibited choice in that previability stage. And this law makes no distinction between pre- and post-viability.

Indeed, one of the reasons I supported Senator DASCHLE's proposal last year, which was sharply criticized as a way to provide political cover, is because it did address the legitimate interests of the State in the post-viability period.

I have no idea whether or not there will be additional bills, or whether or not the President's veto will be overridden, but my guess is, even if the veto is overridden—assume for the moment that it will be—this will not be the last time that we address the question of the State role to regulate abortion, particularly post-viability.

I say to my colleagues here, and to the people of Nebraska who have offered their prayers, that I am willing to enter into earnest negotiations with the goal of placing additional restrictions around abortions late in pregnancy. And this will probably involve some careful definitions around the issue of a health exception, and therefore the circumstances under which a woman can legally choose abortion.

This bill would create an unspecified prohibition on a particular procedure—a prohibition that would result in the State putting restrictions on pre-viability choices and decisions that a woman and her doctor make. Thus, I believe strongly that the Court would find this legislation, this law, unconstitutional and that it would strike it down.

Even more compelling—and I know we have had this debate before, and I don't want to drag it out because I want to merely offer my thoughts not so much to my colleagues, who I suspect have mostly made up their minds on this particular piece of legislation, but to the people in Nebraska—the Court over and over has used the words "life or health."

I heard the distinguished Senator from New Hampshire say he did not find any doctor who could justify this procedure. I don't remember his exact language. However, our reference in this case can't be only physicians. Our reference has to be the Constitution. The Court has given us instructions. They told us what we can do and what we can't do. Unless we change the Constitution, we are not going to be able to simply ignore the Court's repeated opinion that post-viability restrictions must include both life and health exceptions.

Again, I come to the floor, having heard the prayers of thousands of Nebraska friends and people who I don't know quite so well, who have hoped that I would cast a vote to override this veto. I cannot. Not because I do not believe that the government has a legitimate interest to restrict abortions after viability. In fact, I believe it is in all of our interests to do so.

This legislation does not do that. This legislation deals with a single procedure across the span of pregnancy. As a consequence of that, I cannot in either good conscience, or in faith to this Constitution, cast my vote to override the President's veto.

I yield the floor.

Mr. SANTORUM. Mr. President, I yield 15 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I thank the Senator from Pennsylvania. I begin by thanking the Senator for the work he has done on this legislation. This is, obviously, an issue of great importance, one of the most important issues we have dealt with in this Congress. His leadership on this issue has, I think, been a great motivation to many people here. He has had a great deal of influence in the national debate on this issue. I compliment him for what he has done and what I know he will continue to do between now and the vote on this tomorrow morning.

I am here to urge my colleagues to override the President's veto of the ban on partial-birth abortion. The abortion issue has been a difficult and a divisive one for this country. The unfortunate procedure of partial-birth abortion need not be. The vast majority of Americans—even those who call themselves pro-choice—oppose partial-birth abortion.

This overwhelming opposition helped produce legislation to ban that procedure. Unfortunately, the legislation was vetoed by President Clinton. Now is the time for the Members of this body to stand up and to say no to the unnecessary, dangerous and morally troubling procedure of partial-birth abortion.

We now know that this practice is not rare and that it is not undertaken only in cases of severe fetal deformity. Literally thousands of partial-birth abortions are performed in this country every year. Abortion lobbyist Ron Fitzsimmons has said at least 3,000 to 5,000 partial-birth abortions are performed nationwide each year. According to the prominent abortion doctor, W. Martin Haskell, over 80 percent of the partial-birth abortions he performs are purely elective. Ron Fitzsimmons reports that in the vast majority of cases the procedure is performed on a healthy mother with a healthy fetus.

I know that not everyone shares the pro-life position. But in my view, it is clear that any reservations about restricting abortion need not, and should not, apply to partial-birth abortion. Regardless of where one stands on the broader abortion debate, all of us should be able to see partial-birth abortion for what it is—an unjustifiable and wholly unnecessary tragedy.

People on the other side of the pro-life debate often say that the decision of whether or not to undergo an abortion should be left to a woman and to her doctor. Shouldn't we then listen to the official position of the American Medical Association, the official professional association of doctors in America? The AMA has come out unequivocally against partial-birth abortion in endorsing this legislation. Dr. John Seward, executive vice president of the AMA, referred to partial-birth abortion as a procedure "we all agree is not good medicine." The AMA has made a professional judgment based on the medical expertise of its members that partial-birth abortion is simply not good medicine.

Further, our former Surgeon General, C. Everett Koop, has observed that:

. . . partial-birth abortion is never [and that is his emphasis] never medically indicated to

protect a woman's health or her fertility. In fact, the opposite is true. The procedure can pose a significant and immediate threat to both the pregnant woman's health and fertility.

Those are quotes from Dr. Koop.

Earlier today, we heard from the Senate's only physician Member, Dr. FRIST, who spoke, I thought, both eloquently and with great insight based on his own scientific knowledge and his background as a physician, essentially reaching the same conclusions as the American Medical Association and Surgeon General Koop:

There is simply no valid reason for this procedure to exist. It saves no lives. It puts mothers at increased risk for sterility and other complications, and it is in and of itself, in my judgment, morally unacceptable.

I reference a recent story from the Associated Press that shows just how dangerous this procedure can be. According to the AP, on June 30 of this year, Dr. John Biskind delivered a full-term baby girl. Unfortunately, this little girl was almost killed. She suffered cuts to her face and a skull fracture. Luckily, this little girl survived and was adopted by a loving couple. But she literally came within a hair's breadth of being killed on the threshold of life. This little girl has survived, but we should not lose track of the cause of her injuries.

Dr. Biskind attempted to perform a partial-birth abortion. The 17-year-old mother had come to Dr. Biskind's A to Z Women's Center seeking an abortion. The clinic performed an ultrasound, determining what they had was a 23½-week fetus, and decided to perform a partial-birth abortion. Dr. Biskind thought he was performing this procedure on a fetus two-thirds of the way to term; that would be bad enough. But, in fact, the clinic had made a mistake in the ultrasound. The girl actually was approaching full term and Dr. Biskind did not realize this fact until he had already begun aborting her.

This is astounding. According to Dr. Gerster, a Phoenix physician, a 24-week-old fetus weighs an average of 2 pounds, whereas a 36-week-old fetus weighs, on the average, about 6½ pounds. As Dr. Gerster commented:

I don't know how such a grave error could be made in estimating the size. There shouldn't be that kind of discrepancy in an ultrasound. It is horrendous.

Horrendous, indeed, Mr. President. Yet, this is the kind of situation we are attempting to address with this legislation. I think cases like this are why it is time for us to override the President's veto and pass this bill.

As I have said throughout my discussion here today, there are reasonable differences—we understand that—in this Chamber and across this country over the substantive issue of abortion rights. Even those who advocate abortion rights are frequently saying—including the President of the United States—that abortion should be safe and legal and rare. It is hard for me to believe that these types of abortions, partial-birth abortions, don't fit outside that definition.

Mr. President, we all have to come to these decisions in our own way, and I am not here today to tell people who have reached different conclusions that they are in any way going about it in the wrong fashion. But I think that this issue is one that is so important, an issue that I think the country is so united behind, that it is time for us to take ourselves out of the context of the debate on abortion rights and look at this from the perspective of what is morally right. In my judgment, Mr. President—and I know not what decisions others are going to make tomorrow—it is just not morally right to allow this kind of procedure to continue.

Each of us here has our own stories, and I respect the stories of my colleagues on both sides. In our own family, we have had several instances of children born very early. In my own case, we have twins who were born several weeks early. We were fortunate; they did not have serious complications, but they were in a neonatal unit of a hospital for about 3 weeks. While we were there, we saw less fortunate situations around us. We saw children that were much smaller, born much earlier than our babies, clinging to life, children that were born weighing less than 2 pounds, children that were born 10 and sometimes 12 weeks early. The fight those children all made to survive left me with an indelible impression about life that I really hadn't had before that experience.

Yes, I was pro-life, but I had never touched or felt or seen in that fashion exactly what is at stake. The notion that some of those babies we saw fighting for life, who had been born in the very timeframe that partial-birth abortions are occurring, the knowledge that these tiny infants were real people, the realization of that, left me with a memory that I will never forget and left me committed to support the efforts Senator SANTORUM has led here today, which I hope will finally result in the end of this practice.

Mr. President, I intend to vote to override tomorrow. I hope that enough of my colleagues will join in that effort so we are successful. I recognize that this is an issue that people have different views on. I hope that finally, at the end of this debate, we can come together and move forward with something that I think is in the best interest of our country, and more importantly, in the best interest of our children.

I thank the Senator from Pennsylvania, and I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I yield myself such time as I may consume.

Mr. President, I was touched by the remarks of the Senator from Michigan about having premature babies of his own. I stand here today as a mother, a grandmother, and a Senator. When my babies were born, one was born 2 months early and one was 6 weeks early. There wasn't one prayer that I didn't say, there wasn't one emotion I didn't feel. And I feel that same emotion toward any child born in that circumstance. My babies grew up healthy and they are now in their thirties, and one has made me a grandmother.

But that is not what this debate is about. This debate is about whether we are going to protect the lives of women and whether we are going to protect the health of women. I say here today that, as long as I am here, I will work to do that. These are women who find themselves in tragic situations, traumatic situations, with a pregnancy that has gone terribly wrong. With a pregnancy which could endanger their health, their life, their fertility, and their ability to have a family in the future.

This bill is extreme. It is dangerous for women. Why do I say that? It has no exception to protect women's health. The exception for a woman's life is very narrowly drawn. It is not the true life exception that we have used in other bills. So this bill is extreme, the bill is dangerous, and the bill turns its back on the health of women. As Senator KERREY from Nebraska has said, clearly, it is unconstitutional. I am not standing here just because the bill is unconstitutional. Very clearly, the constitutional law that governs is Roe v. Wade, which says you must always consider the life or the health of a mother.

I am standing here because I care about the health of women and their lives. I don't want to see this bill become the law of the land. I hope my colleagues will stand for the health and the life of women and support the President's veto.

Roe v. Wade guarantees American women the right to choose. In the early stages of a woman's pregnancy, a State may not interfere with her right to end the pregnancy. In the midterm of a pregnancy, a State may regulate abortion procedures, but only to protect the woman's health. That is what Roe says. After viability of the fetus, when the fetus could live outside the woman either with or without life support, a State can regulate and, yes, even prohibit abortions under Roe. States can prohibit abortions after viability, except—except—for the life of the woman or the health of the woman.

The life and the health of women must always be protected. That is the law. If we chip away at those exceptions, we endanger women because, make no mistake, this isn't the first attempt to stop a procedure and walk away from the life or health exception.

There will be many attempts. There will be other procedures. My colleagues on the other side are very honest about it, they want to criminalize abortion. They are honest about it and I appreciate that. I know this is just one way they are going to try to get to their ultimate goal. If we don't hold the line here on life or health, we will lose this right.

Mr. President, the bill we are debating directly contradicts Roe. As I said, and as the Senator from Nebraska before me said, it is unconstitutional because it doesn't protect the health of the woman. It is silent. It doesn't use the words "health of the woman." Again, it doesn't contain a true life exception. It is a very narrow life exception. So even her life would be threatened if we allow this bill to become law.

My colleagues have quoted the fine Senator from Tennessee, Senator FRIST, who is a doctor. They have quoted Surgeon General Koop. They are not OB/GYNs. They are not obstetrician-gynecologists. The American College of Obstetricians and Gynecologists—those are the doctors who bring babies into the world. Those are the doctors who deal with these emergency abortions—39,000 strong. They are specialists in women's reproductive health. What do they say about this legislation? They oppose it. The organization says that this bill is—and I am quoting—"dangerous." Who is it a danger to? It is dangerous to women. It is dangerous to the women.

The American Medical Women's Association also firmly opposes this legislation.

This bill, if it becomes law, will force doctors to make medical decisions that jeopardize women's health. Doctors will be afraid. They will be fearful because, if they can't meet the very narrowly drawn exception for life, but they use the procedure because they are afraid the woman would die, the doctor can go to jail for 2 years and be fined. If the woman made this decision, let's say after she learned that the baby's brain is developing outside the head, and she didn't want to carry the pregnancy to term—maybe because she was afraid that her husband might disapprove, or maybe he was an alcoholic, or maybe he was a drug addict, maybe he was estranged—the husband can also sue the doctor. He can sue, very interestingly, for psychological distress.

When we talk to our colleagues on the other side, they don't want to include any psychological reason whatsoever when a woman has to choose. But, yes, if the man is suffering psychological distress, he can sue.

No woman, in my opinion, wants to visit her doctor about her pregnancy—and I have done it in my own life—and see her Senator lurking over the doctor's shoulder. People often don't like us lurking over any parts of their life, let alone, let alone, when they have a medical procedure.

I find it interesting that some Senators who come here and say there is too much government—"get government off our backs, there is too much government"—believe that they know more than physicians, OB/GYNs, who deal with real life in the real world. These Senators believe that they know better than a family about what to do in such a situation.

No woman wants to walk into her doctor's office and see a sign that says, "Warning, Senate interference in your doctor's decisions may be hazardous to your health." Or, "Warning, your doctor's hands are tied, he or she may not choose the best procedure for you because your Senator has decided what procedure is allowed and what procedure is not allowed." Forget what you learned in medical school; forget about what you think is best for women; the Senator is telling you what procedure to use.

My colleagues in the Senate, I say this is dangerous. Whether you have cancer, Alzheimer's, AIDS, diabetes, Parkinson's, heart disease, or any condition—all the diseases we fear—Senators should not be making decisions about what procedures should be used. Senators should not prevent a doctor from using a procedure that he or she determined was needed to protect the patient's health, to protect her from infertility, to protect her from paralysis, or worse. Government should not be in the business of eliminating safe, medical options for patients.

We all want to know, I say to my colleagues who are loving parents, what would you do if your physician called you and said, "I just examined your daughter, and I believe her life is threatened," or "I believe she might never have a child again, and I believe the only procedure to use is the one that Senators here want to ban." I believe in your heart of hearts you would get down on your knees, pray to God, and say, "Save my daughter's life. Help her be able to have a child again." I believe that.

If you didn't, if you chose another way, that is fine for you. But don't force everyone into that situation where they don't have the option that they need. If it is all right for you to narrow your options for your daughter, for your granddaughter, I bless you for it. No one is forcing you to do that. But I think it is important that women have the option to save their lives, to save their health. And, yet, there is not one word in this about an exception for health, and it is a very narrowly drawn exception for life.

Doctors should make medical decisions in consultation with their patients. Doctors should be free to make decisions that are best for their patients' health. When doctors take their Hippocratic oath, they say, "Do no harm." "Do no harm." But if in their heart they believe they are going to do harm, and it is because Senators tied their hands, they find themselves in an unacceptable situation. They can't look at the woman or her husband; they can't look in the eyes of the parents of that woman and say, "I am doing everything I can," when they know they are afraid to use a procedure because they cannot understand the vague language that Senators put into a bill.

If enacted, this bill could threaten the health of women across the country—our sisters, our daughters, our mothers, our nieces, our coworkers, our friends, our granddaughters.

I want to talk about the life exception. It is very narrow.

A woman's life would be protected only if her life is in danger by a "physical disorder, illness, or injury." That is a quote from the bill. But if her life is in danger for any other reason, the life exception does not apply. In other words, if the pregnancy itself endangers a woman's life, the exception does not apply. Even the new Hyde language, which narrows the exception for life of a woman, acknowledges that the pregnancy itself may endanger a woman's life. But, yet, the language in this bill includes an exception only if she has a physical disorder, illness, or injury, and not any condition that arises from the pregnancy itself.

So today I think we need to face the fact that this bill has crafted a unacceptable life exception. And for those who are voting for it who think that they are protecting the life of the woman, read it again. Read again the Henry Hyde language which we have used for many years. Even the narrow version is different than this. This is dangerous.

Let me say again: this bill, as it is currently written, is dangerous.

We have some people in the galleries today who have had procedures that would be banned by this bill. They are loving mothers. They are loving, loving mothers. Tiffany Benjamin is from California—this is her picture. This is her beautiful 3-year-old baby. He is now 3. He is a little younger here. She had this child after undergoing a procedure which her doctors recommended and which this bill would ban. And now she has this beautiful child.

Also up in the gallery is Maureen Britell from the District of Columbia area, who had also had a procedure which would be banned by this bill. Maureen is a devoted mother.

The PRESIDING OFFICER. The Senator will withhold.

The Senator is reminded of rule 19, section 7, which reads: "No Senator shall introduce or bring to the attention of the Senate during the session any occupant of the Gallery of the Senate. No motion to suspend this rule

shall be in order, nor may the Presiding Officer entertain any request to suspend it by unanimous consent.''

Mrs. BOXER. Thank you, very much, Mr. President. I was unaware of the rule.

I will say, then, that there are women who are here today in Congress walking the Halls. And they are looking into the eyes of Senators. They are asking them, please don't do anything. Don't do anything to jeopardize the health and the life of any woman.

These are women who have had procedures that would be banned by this bill. These are women who are loving mothers. These are women who are begging us, begging us, to protect the lives and the health of women.

I am going to tell you some stories.

As I understand it, it is all right to show photographs of women. Is that correct, Mr. President? Am I permitted to show photographs of people from the State?

The PRESIDING OFFICER. The Senator is so permitted.

Mrs. BOXER. I thank the Chair.

This is Coreen Costello. She is a registered Republican. She describes herself as very conservative. The reason I mention that is because what we are debating here today is not a partisan issue. Coreen is clear that she and her family are strongly opposed to abortion, and yet she wants us to stand with the President on this veto.

In March of 1995, when she was 7 months pregnant with her third child, Coreen had premature contractions and was rushed to the emergency room. She discovered through an ultrasound that there was something seriously wrong with her baby. The baby, named Katherine Grace, had a deadly neurological disorder and had been unable to move inside Coreen's womb for almost 2 months. The movements Coreen had been feeling were not the healthy kicking of a baby, they were actually nothing more than bubbles and amniotic fluid which had puddled in Coreen's uterus.

The baby had not been able to move for months. The chest cavity was unable to rise and fall. Her lungs and chest were left severely underdeveloped, almost to the point of nonexistence. Her vital organs were atrophying. The doctors told Coreen and her husband the baby was not going to survive, and they recommended terminating the pregnancy. Coreen said, ''This is not an option. I will not have an abortion. I want to go into labor naturally.'' She wanted the baby born on God's time. She did not want to interfere.

The Costellos spent 2 weeks going from expert to expert. They considered many options, but they all brought severe risks. They considered inducing labor. They were told it would be impossible due to the baby's position. Also, the baby's head was so swollen with fluid, it was already larger than that of a full-term baby, so labor—let me repeat, labor—was not an option.

They considered a cesarean section, but the doctors were adamant that the risks to her health were too great. In the end, they followed their doctor's recommendation and Coreen had an abortion procedure that my colleagues want to outlaw today.

You just heard a story, a real story. Coreen and her husband faced a tragedy that most people never have to face. But because Coreen had access to the medical procedure her doctor felt was the safest and most appropriate, she and her husband were able to keep their dream of having a large family, and you see them here in this picture. They now have three happy, healthy children, and Coreen is due to deliver another child any day now.

Coreen writes to us, to every Member of the Senate, I could not have had this family without this procedure. ''Please, please, give other women and their families this chance,'' she says. ''Let us deal with our tragedies without any unnecessary interference from our Government. Leave us with our God,'' she writes to us, ''our families, and our trusted medical experts.''

Now, I want to say to my colleagues this story is what happens to real people. This is real. This is a woman who says she is very conservative and she is very against abortion. But she is asking us to not do away with the procedure she had, so that other women will have the opportunity she had to bear children in the future.

In the spring of 1994, Viki Wilson, a registered nurse, and her husband Bill, a physician, were expecting their third child. Viki was in 36th week of her pregnancy, and the nursery was ready. Her family was anticipating the arrival of their new ''little one.''

Her doctor ordered an ultrasound which detected something that all her prenatal testing had failed to detect. Approximately two-thirds of her daughter's brain had formed on the outside of her skull.

This deformity was causing Viki's daughter to have seizures. Over time, these seizures became more and more severe. They threatened to puncture Viki's uterus. Even if Viki could carry her daughter to term, the doctors feared that her uterus would rupture in the birthing process.

Viki could not give birth to her child without seriously jeopardizing her own health—or even her life.

After consulting with other doctors and their clergy, Viki and her husband made the painful choice to have an abortion in order to protect Viki's health.

In December 1996, Viki and Bill were thrilled to welcome a baby boy named Christopher into their family.

Viki Stella was in the third trimester of her pregnancy when her son was diagnosed with nine major anomalies, including a fluid-filled cranium with no brain tissue at all, compacted flattened vertebrae, and skeletal dysplasia. Her doctors told her that the baby would never live outside of her womb.

Viki writes ''My options were extremely limited because I am diabetic and don't heal as well as other people. Waiting for normal labor to occur, inducing labor early, or having a C-section would have put my health at risk.'' She continues ''My only option . . . was a highly specialized, surgical abortion procedure developed for women with similar difficult conditions.''

Though she was distraught over losing her son, Viki knew the procedure was the right option. As promised, the surgery preserved her fertility. In December 1995, she gave birth to a darling son, Nicholas.

Viki's situation was heart wrenching. She was told her son was dying inside her. Her diabetes severely limited her medical options. Congress has no business interfering with these difficult and personal medical decisions.

The point is, we must not go back to the days before Roe v. Wade when women died or women were maimed. We can not go back to the days when women's health was not considered important, when women's lives were not considered important. Any restrictions on women's access to abortion must always make an exception for the life and health of the woman. If we do not, as sure as I am standing here, women will die, because we know what happened before Roe. They did die.

In response to arguments that proponents of this bill make that it bans one specific abortion procedure, I respond that we are not asking anyone to undergo any abortion procedure who has a moral problem with it. For those who think abortion is wrong, who would rather their daughters have a cesarean and believe that God would take care of it, that is what they should do. That is what is important about being pro-choice; we give people the choice. No one has to undergo any abortion procedure if they do not want to. All we are saying is, do not outlaw a procedure for every woman, because there will be women like this who will choose that procedure because they want to make sure that they can have children again.

Now, I want to point something out. In the last debate we had on this, Senator FEINSTEIN and I offered an amendment. It was a substitute for the bill we are debating today. And do you know what it said? It said that we oppose all late-term abortions except for when the life and health of the woman are in danger. We went to our Republican colleagues, and we said, ''Why don't you join hands with us on this? Roe says you can restrict in the late term. We are willing to do that. Of

course, we are in favor of Roe. And we will walk down this middle aisle here, hold hands across party lines here, and say no more abortion late term except for life and health."

They did not want to do it. And when I asked them why, they were honest. They said, "We don't believe women will tell the truth about the health exception. We believe they will say it is about health but in their heart it is not about that."

I want to challenge that today. I know that a woman in this circumstance, who has carried a child into the late term, desperately wants that baby. I have been there myself. When my babies were born prematurely, I can't even tell you the feeling that I had, that I might lose them, because in those years it was very difficult. But they made it. They hung on.

So I know that a woman who gets to the late term is not going to lie about her health and say, "Oh, give me this abortion; it's the seventh, eighth month. I have decided against this." That is not what a woman will do.

The health exception is only for circumstances when there is something seriously wrong.

So I think suggesting that a woman in the late term will not tell the truth about her health and why she is seeking an abortion is more than insulting to women. It is dispiriting. I know my colleagues could never think that of their children, their daughters, their nieces. I know they could not. Then why would they leap to that conclusion of other women?

I strongly support passing legislation that says no late-term abortion whatsoever except to protect the life and the health of a woman.

But I say to you that I will not support this legislation, with absolutely no health exception, and with a life exception that is very narrowly drawn. If this legislation becomes law, women like Coreen, who are pro-life and anti-abortion, but who want to protect their ability to have children in the future, may not have the chance to become pregnant again. Women who are pro-life, who are anti-abortion, may not have the chance to have a family just like Coreen Costello pictured here, yet again pregnant with her fourth child. Coreen, very conservative, writes to us: Please, please support the President's veto.

So, I say to my friends, I know what a difficult debate this is. I know the heartfelt emotions on both sides, and I respect the heartfelt emotions on both sides. I am going to close here with a letter that each member of the Senate received from 729 rabbis. I think this is appropriate since we are going into the most holy time of the Jewish people. This is what the rabbis conclude:

Abortion is a deeply personal issue. Women are capable of making moral decisions, often in consultation with their clergy, families and physicians, on whether or not to have an abortion. We believe that religious matters are best left to religious communities, not politicians. . . . We urge you to vote to sustain President Clinton's veto.

I ask unanimous consent to have this letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

SEPTEMBER 10, 1998.

DEAR SENATOR: We are writing to urge you to vote to sustain President Clinton's veto of H.R. 1122, the so-called "Partial-Birth Abortion" Act of 1997.

As rabbis, we are often called upon to counsel families facing difficult decisions concerning reproductive health choices, including abortion. Like other members of the clergy, we turn to religious law and teachings for guidance in providing such counsel. Judaism has laws governing the issue of abortion, but each case is considered individually.

As in other religions, in Judaism, there are different interpretations of these laws and teachings, and we respect and welcome debate on these issues. However, this debate should remain among those who practice our faith, not on the floor of Congress.

The debate surrounding reproductive choice speaks to one of the basic foundations upon which our country was established—the freedom of religion. It speaks to the right of individuals to be respected as moral decision makers, making choices based on their religious beliefs and traditions as well their consciences.

In addition, we are concerned about the language of the bill itself. Given the fact that the "Partial Birth Abortion" Act uses vague and non-medical language to describe the prohibited procedures, it would be very difficult for anyone, whether clergy or physician, to be certain about which medical procedures would be banned. Given the bill's nebulous language and the importance of the issue, we find it difficult to engage in a theological debate on this matter.

Abortion is a deeply personal issue. Women are capable of making moral decisions, often in consultation with their clergy, families and physicians, on whether or not to have an abortion. We believe that religious matters are best left to religious communities, not politicians.

Once again, we urge you to vote to sustain President Clinton's veto.

Sincerely,

Signed by 729 rabbis.

Mrs. BOXER. Mr. President, this letter is signed by rabbis from Arkansas, California, Colorado, Connecticut, Delaware, D.C., Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington State, West Virginia and Wisconsin.

I thank my colleagues who have participated in this debate. I see Senator ROBB is here. I know this is a tough one. I know this is hard. I just appreciate his being here.

Mr. President, I yield the floor.

Mr. SANTORUM. Mr. President, I ask if the Senator will yield for a question about some of the things that she stated in her testimony?

Mrs. BOXER. I will come back onto the floor shortly. At the moment I have a meeting, and people waiting for me.

Mr. SANTORUM. I yield 5 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 5 minutes.

Mr. ASHCROFT. Mr. President, I rise to speak in favor of overriding President Clinton's veto of the partial birth abortion ban. I would like to begin by thanking the manager of the bill, the Senator from Pennsylvania, for his continuing and outstanding work on this important issue.

No issue cuts to the core of our values like the issue of abortion. It challenges us to define our notion of liberty and calls into question our most fundamental assumptions about life. Today, we do not debate whether enactment of a measure will positively or negatively affect the welfare of some Americans. Today, we debate life and death.

Last Congress and again last year, we voted to end the barbaric method of infanticide known as partial birth abortion. Both times, the President vetoed the ban. In so doing, he ignored the testimony of medical experts who assured us that this procedure is never necessary to preserve the life or health of the mother. He also dismissed evidence showing that thousands of partially-born children are routinely and electively killed across the country each year.

The President not only accepted, but helped disseminate the lies and false testimony of pro-abortion advocates. Though the lies were finally exposed, the President demonstrated that his support for this procedure did not depend on the truth. The distortion reached a point where even his allies in the media could no longer defend the President's veto. Richard Cohen, an avowed liberal and pro-choice columnist with the Washington Post, concluded,

President Clinton, apparently as misinformed as I was about late-term abortions, now ought to look at the new data. So should the Senate. . . . Late-term abortions once seemed to be the choice of women who, really, had no other choice. The facts are now different. If that's the case, then so should be the law. (Wash. Post, 9/17/96.)

And yet, once again, the President's apologists have taken to the floor to defend the indefensible.

This procedure is never necessary to save the life and preserve the health of the unborn child's mother. Four specialists in OB/GYN and fetal medicine representing the Physicians' Ad Hoc Coalition for Truth have written:

Contrary to what abortion activists would have us believe, partial-birth abortion is

never medically indicated to protect a woman's health or her fertility. In fact, the opposite is true: The procedure can pose a significant and immediate threat to both the pregnant woman's health and fertility. (Wall St. Journal, 9/19/96).

Indeed, former Surgeon General C. Everett Koop stated,

I believe that Mr. Clinton was misled by his medical advisors on what is fact and what is fiction in reference to late-term abortions. Because in no way can I twist my mind to see that the late-term abortion as described—you know, partial birth, and then the destruction of the unborn child before the head is born—is a medical necessity for the mother.

Nor should we accept the myth that this procedure is rarely utilized. According to interviews conducted by the Record of Bergen County, New Jersey, physicians in New Jersey alone claim to perform at least 1,500 partial birth abortions each year—three times the number which the National Abortion Federation has claimed occur in the entire country.

Mr. President, a legislative ban on partial birth abortions is constitutional. Indeed, allowing this life-taking procedure to continue would be inconsistent with our obligation under section 5 of the 14th Amendment to protect life.

Although opponents will point to decisions in which activist federal judges invalidated state-passed bans, language nearly identical to that which is in this bill has been upheld in a number of courts. The ban's requirement that the abortionist deliberately and intentionally deliver a living fetus that is then killed implicate the partial birth procedure and no other. Judges who deemed the ban unconstitutionally vague ignored the text, and instead, saw fit to substitute their views in place of the views clearly expressed by the various state legislatures.

Mr. President, I want to share a word of caution with those claiming that a ban on partial birth abortions is unconstitutional. If they truly believe that outlawing this procedure is impermissibly vague, the inevitable conclusion people will draw is that infanticide and abortion are indistinguishable. I do not see how this argument provides any solace to the defenders of this gruesome procedure.

Finally, before this debate is through, I expect those defending the President's veto will say that opponents of partial birth abortion are really against all abortions. Well, Mr. President, I cannot speak for other Senators, but on that charge, I plead guilty. I believe abortion is the taking of innocent human life and has no place in a culture that values human life. I believe that precious human life should be nurtured in love and protected in law. For this reason, I support a constitutional amendment to protect human life.

On January 20th of this year, I chaired a hearing in the Constitution Subcommittee on the 25th anniversary of Roe v. Wade. We looked at how the Supreme Court's decision failed to provide a framework for sound constitutional interpretation or to reflect the reality of modern medical practice. This latter failure is not surprising since the Court had neither the capacity to evaluate the accuracy of the medical data, nor a way to foresee the remarkable advances that would make the then-current data obsolete.

From Dr. Jean Wright of the Egleston Children's Hospital at Emory University, we learned that the age of viability has been pushed back five weeks, from 28 to 23 weeks, since Roe was decided. We learned that surgical advances now allow surgeons to partially remove an unborn child through an incision in the womb, fix a congenital defect, and slip the "pre-viable" infant back into the womb. However, I think the most interesting thing we learned at the hearing is that unborn babies can sense pain in just the 7th week of gestation.

Mr. President, these facts should help inform this debate. For instance: If we know the unborn can feel pain at seven weeks, why is it such a struggle to convince Senators that stabbing a six month, fully-developed and partially-delivered baby with forceps and extracting its brain is wrong?

I realize, however, that not everyone agrees with my view on abortion. Indeed, I recognize that the American people remain deeply divided on this issue. But where there is common ground, we need to move forward and protect life.

One issue on which there is consensus is parental consent. Most Americans agree that parents should be involved in helping their young daughters to make the critically important decision of whether or not to have an abortion. A recent CNN/USA Today survey found that 74 percent of Americans support parental consent before an abortion is performed on a girl under age 18.

Last month, I introduced the Putting Parents First Act, which would require parental consent before a minor could obtain an abortion. Enactment of this legislation would allow Congress to protect the guiding role of parents as it protects human life.

Today's vote—to end the cruel practice of partial birth abortion—presents another opportunity for Americans on both sides of the underlying abortion issue to find common ground. The American people agree that a procedure which takes an unborn child, one able to be sustained outside the womb, removes it partially and then kills it is so cruel, so inhumane, so barbaric as to be intolerable. Indeed, after the procedure was described for them, fully 84 percent of the American people said Congress should outlaw it.

Mr. President, legislatures in more than 20 states have followed Congress's lead and passed laws outlawing this procedure. Two-thirds of the House of Representatives already has voted to overturn the President's veto. And when this chamber voted, more than a dozen Democrat Senators joined us in attempting to override the veto.

Mr. President, a consensus has formed. The American people and a substantial majority of their elected representatives in Congress want to eliminate this gruesome procedure from our nation's hospitals and clinics. The will of the American people should not be thwarted by the twisted science and moral confusion that has engulfed this Administration.

Mr. President, let me close by saying that if we are not successful today in overriding the President's veto, this will not be the end of the debate. We will come back next year and we will vote again. We will continue to vote on this issue of life and death until the voice of the American people is heard.

Mr. HELMS. Mr. President, one of the most tragic and saddest days in our nation's history was the day the Supreme Court ruled in Roe v. Wade that unborn babies can legally be killed by their mothers. Each of us who has fought, heart and soul, to undo that damaging decision, understood so well on January 22, 1973, that we had yet to see what devastation would come of such a horrendous rule.

Indeed, when a nation condones instead of condemns the inhumane procedure known as partial birth abortion, it is clear our worst fears have come true.

I am grateful to the distinguished Senator from Pennsylvania (Mr. SANTORUM) for his strength and conviction in standing up in defense of countless unborn babies. RICK SANTORUM's willingness to lead the fight on behalf of passage of the Partial Birth Abortion Ban Act is a demonstration of courage.

Our hearts and prayers go out to him and Karen, for their loss of their precious baby son, Gabriel Michael.

Mr. President, since May 20, 1997, when the Senate voted 64–36 to outlaw the partial birth abortion procedure, a six-pound baby girl was born in the state of Arizona. Of course, there have been countless other precious little lives who have graced this world with their presence since that time.

What is exceptional about this baby girl, is that she is the first known survivor of the partial birth abortion procedure. Amazingly enough, while the abortionist was in the process of performing the partial birth abortion, this little one's life was spared when it was realized that she was further along in her gestational development than thought.

Incidentally, it is due to this type of unawareness regarding the developing stages of a baby growing inside a mother's womb, that has led to the senseless

murder of millions of the most innocent human beings.

Thankfully, this baby girl is no longer faceless. Although, her head has been marred by the instruments of the abortionist, and she may carry this scar as a reminder of her close encounter with death, she has been given a name and a home. Not surprisingly, one of the millions of couples who are anxiously waiting to adopt, has taken her into their loving family. Proving once more, there is no such thing as an unwanted baby, just unwanted by some.

I sincerely pray, Mr. President, that this country has not grown completely stone-cold in its response to the sanctity of human life. But, that Americans would be moved to reevaluate their views on the troublesome issue of abortion when they hear of the baby girl in Arizona, who was just minutes away from having her life cruelly and painfully ended. More specifically, I pray one individual in particular will not for a third time, turn a deaf ear to the countless cries of the other unborn babies who may not be as fortunate to have their lives miraculously spared. I am of course referring to the President of the United States, who has signed the death sentence of the most innocent and helpless human beings imaginable by twice vetoing the underlying legislation.

President Clinton, and his cadre of extreme pro-abortion allies, have sought to explain the necessity of a procedure that allows a doctor to deliver a baby partially, feet-first from the womb, only to have his or her brains brutally removed.

However, well-known medical doctors, obstetricians and gynecologist have repeatedly rejected the assertion that a partial birth abortion is needed to protect the health of a women in a late-term complicated pregnancy. Even the American Medical Association wrote a letter endorsing the Partial Birth Abortion Ban Act.

Mr. President, there is much to be said about the facts surrounding the number of partial-birth abortions performed annually and the reason they are performed—or at least the given, stated reason. It is hard to overlook the confession of Ron Fitzsimmons, executive director of the National Coalition of Abortion Providers, who admitted that he, himself, had deceived the American people on national television about the number and the nature of partial-birth abortions.

Mr. Fitzsimmons now estimates that up to 5,000 partial-birth abortions are conducted annually on healthy women carrying healthy babies. This is a far cry from the rhetoric espoused by Washington's pro-abortion groups who maintain that only 500 partial-birth abortion are performed every year, and only in extreme medical circumstances.

Mr. President, it is time for the Senate to once and for all settle this matter and pass the Partial-Birth Abortion Ban Act with a veto-proof vote and affirm the need to rid America of this senseless, brutal form of killing. It is also important to note that the American people recognize the moral significant of this legislation. The majority of Americans agree that the government must out-law the partial birth abortion. A poll conducted by CNN/Time in January of this year, shows that 74 percent of Americans want the partial birth procedure banned. In fact, more than two dozen states have passed legislation similar to the Partial-Birth Abortion Ban Act.

Mr. President, regardless of the outcome, when the Senate votes on the question of whether to override President Clinton's veto of the Partial-Birth Abortion Ban Act, the impact will have grave consequences. For those who care deeply about the most innocent and helpless human life imaginable, failure to override the Clinton veto will border on calamitous.

The President of the United States should have to explain to the American people why he will not sign this ban over and over again. The spotlight will no longer shine on the much-proclaimed right to choose. Senators have been required to consider whether innocent, tiny baby-partially-born, just 3 inches from the protection of the law-deserves the right to live, and to love and to be loved. The baby is the center of debate in this matter.

I remember so vividly the day in January 1973, when the Supreme Court handed down the decision to legalize abortion. It was hard to find many people to speak up, certainly on the floor of the Senate, on behalf of unborn babies.

But it is time, once again, for Members of the Senate to stand up and be counted for or against the most helpless human beings imaginable, for or against the destruction of innocent human life in such a repugnant way. The Senate simply must pass the Partial Birth Abortion Ban Act, and I pray that it will do it by a margin of at least 67 votes in favor of the ban.

Mr. BURNS. Mr. President, this is the eve of the second Senate vote to override the President's veto of the Partial Abortion Ban Act. I am proud to be a co-sponsor of this bill, and I urge my colleagues to listen to their consciences and vote to override the veto and enact the ban.

Contrary to the assertions of some, this bill is not about a woman's right to choose to have an abortion. It's not about Roe v. Wade. Regardless of one's views on abortion in general, the partial birth abortion procedures should be abhorrent in a civilized society. It is a gruesome procedure, performed late in the term, which most physicians believe is never medically necessary. Most Americans agree it should be banned.

The Partial-Birth Abortion Ban has passed the Congress twice now with my support, first in 1996 and again last year. However, the President has twice vetoed this legislation against the will of the American people. I hope the Senate does the right thing by overriding the veto.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

Mr. ROBB. Mr. President, I yield myself such time as I may consume, chargeable to the Democratic manager.

The PRESIDING OFFICER (Mr. COATS). The Senator is recognized.

Mr. ROBB. Mr. President, I rise to urge colleagues who had the courage to oppose this legislation when it was considered by the Senate last year to demonstrate again that same courage by voting to sustain the President's veto of the so-called partial-birth abortion bill.

There is no question that this is a gut-wrenching issue. I know how passionately most of those feel who gather at the Capitol today and tomorrow to support a ban on this medical procedure and want us to override the President's veto. Those who have been telephoning, writing, and e-mailing us in such overwhelming numbers are equally emotional in expressing the depth of their feeling in opposition to abortion generally and to this procedure in particular.

This will be a very tough vote. But, as a matter of sound public policy, it is the right vote, and it is consistent with our Constitution as interpreted by the Supreme Court. If this legislation were to become law, the Congress would be telling physicians how to practice medicine, and Senators, with one exception, are not trained or certified to do that. In fact, the only Member of this body who is a physician made a comment during an interview on HMO reform recently about who should, and, more important, who should not be practicing medicine. He said that "[Congress] should not be practicing medicine. . . . Doctors should be practicing medicine. That's very clear."

Mr. President, it is important that everyone understand what is really at issue here. This debate is not about whether or when to terminate a pregnancy, because this bill will prevent not a single abortion; it is only about how to terminate a pregnancy. If it is otherwise lawful for a woman to terminate a pregnancy, this bill will only require that she and her doctor choose another medical procedure, even though her doctor may believe that procedure is less protective of her health.

In some States, it is legal for a woman to terminate a pregnancy in the third trimester, even when the life

or health of the mother are not at issue. This bill does not address that situation at all.

It is appropriate to note, however, that some of us supported a tough ban on third-trimester abortions when this bill was considered last year, but our efforts were defeated by proponents of this bill in an effort to keep a very politically potent issue alive. But I ask those who want to keep abortions safe, legal, and rare, as I do, and who are disturbed by this procedure, as I am, to stop for a moment and think: What specific abortion procedure would you prefer? Because this legislation will necessarily encourage the use of some other procedure that I believe, if we focus on the specific details of the alternative procedure, we would find equally disturbing.

In truth, this debate is really about how an abortion is performed and, more essentially, about who chooses. It is about whether Congress chooses or whether American women and their doctors choose. I believe American women and their doctors should choose. I am troubled that at the heart of this legislation is an incredible presumption, the presumption that this Congress is more concerned or better qualified to judge than expectant parents about what is best for their families.

In matters this personal, what is best for American families should be decided by American families based on their individual beliefs and faith. Most opponents of this ban have very strong convictions about when life begins. But ultimately, Mr. President, the very question of when life begins is also a matter of belief, a matter of faith, a matter between individuals and their God. Some denominations believe life begins at conception. Others believe life begins at birth. Still another believes life begins 120 days after conception, at the time the soul enters the fetus.

My point here is that we must be very careful when legislating matters of faith, ours or someone else's. And in the absence of knowing, rather than believing, when life begins, we are forced to draw some very difficult lines. That is what the Supreme Court did in Roe v. Wade. The Court said that in the first trimester, the decision to continue a pregnancy is solely within the discretion of the mother; in the second trimester, the Government may impose reasonable regulations designed to protect the health of the mother; and in the third trimester, the rights of the unborn child are recognized, with the rights of the child weighed against the rights of the mother to escape harm or death.

The Court has been clear in protecting a woman's life and health, both before and after viability, even striking down a method-of-choice case because it failed to require that maternal health be the physician's paramount consideration.

Proponents of this bill frequently cite the American Medical Association's support for this legislation, but not the College of Obstetricians and Gynecologists' opposition to it. In fact, the ACOG has told us "the intervention of legislative bodies into medical decisionmaking is inappropriate, ill-advised and dangerous."

Again, Mr. President, we are a Congress of legislators, not a Congress of physicians. There are places we should not go and decisions we should not make. A respect for the judgment of physicians, a respect for the rights and needs of families in often excruciatingly difficult circumstances, and a respect for our Constitution ought to lead us to conclude that this bill should not pass.

Let me conclude by saying that I am pro-choice, I am not pro-abortion. I respect those who believe that abortions should never be performed, for religious or moral or personal reasons, and I believe that those individuals should follow their faith and choose not to have one. I particularly admire the convictions of those who choose life, even in the most difficult circumstances. But in choosing life, they choose. They choose life, just as families that make different and sometimes agonizing choices should also be allowed to choose.

I believe that, as legislators, we have an obligation to protect the rights of all those who live in our States. We all believe in freedom. We all understand that with freedom comes responsibility. Yet, at its heart, this legislation says to the women of America: We don't trust you with the freedom to choose; we don't trust you to do what we think is right; so we will take away your freedom to search your hearts, to follow your conscience, to rely on your faith and the judgment of your physicians and to make a very personal decision that affects your lives and your families.

That is why I will vote to sustain the President's veto, and I hope at least those who opposed the bill last year will do so again.

With that, Mr. President, I thank the Chair and I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I will respond in one quick way to the comments of the Senator from Virginia. What has been sort of taken as a matter of record is that 80 to 90 percent of the partial-birth abortions performed in this country are on healthy women with healthy babies and that these are done for truly elective reasons. The idea that somehow we are holding on to this myth that we are doing this to save unhealthy women or because a baby is so severely deformed that they cannot live just isn't what the facts dictate. And that is from admissions from folks who perform the procedures, not our side coming up with these numbers.

I hope we can stick with the facts as to what we are really talking about.

I have no speakers on my side, so I will be happy to yield.

Ms. MOSELEY-BRAUN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I want to talk about the facts and share with listeners a letter from Kate Hlava, from Oak Park, IL. These are her words:

My pregnancy had been complicated from the beginning, but doctors kept assuring us that everything was fine. We went in for a routine ultrasound at 20 weeks, and our world came crashing down. The results of that ultrasound were an expecting parent's worst nightmare. The baby had a serious heart condition known as tetrology of fallot with absent pulmonary valve and overriding aorta.

We saw numerous experts across the Midwest, resulting in just as many prognoses. At that time, we were given the option of terminating the pregnancy. We chose not to because we so desperately wanted the baby. We hoped and prayed every day that the baby would make it to term. If he was born prematurely, he would not have been able to have the operation he needed to survive, a surgery he would have needed every few years as he grew.

Unfortunately, he was not strong enough to make it to term. He began showing signs of heart failure during the 27th week of my pregnancy. His liver was huge, his heart was enlarging, and I was retaining too much amniotic fluid. I had started to dilate and was going to go into labor soon. There was nothing the doctors in Illinois would do.

I couldn't leave my house. I was contemplating suicide. As my baby was dying, so were pieces of myself, and no one here would help me stop it. In Illinois, had my baby been born, even prematurely and with no real chance of survival, the doctors would have been legally obligated to try to keep him alive. They would have performed fruitless and painful procedures on him, making his few moments on this earth a living hell. I didn't want that for my son. No parent would.

It was then that my obstetrician suggested that we go to Kansas for a therapeutic abortion because of fetal anomaly. I have lived my entire life believing that abortion may be right for other people but that I never wanted to make the decision. I absolutely do not believe that a woman should be able to choose to terminate her pregnancy at 27 weeks because she is tried of being pregnant or because she was told the baby had brown eyes instead of blue.

I have met other women who have undergone a similar procedure. Not one did so because she didn't want the baby. These women, like myself, wanted their babies and still miss them, but the prospect of bringing an extremely sick baby into the world, who would suffer a short life full of painful medical procedures, felt inhumane. Medical science is sophisticated enough to diagnose such anomalies at the fifth month of pregnancy.

I am not sure where Bryne [The Editorial writer to whom Ms. Hlava is Responding] got

his description of the procedure, but it is not the procedure I had. He described it as "all but the head of a living fetus is pulled from the mother, its brains sucked out, causing death and making it easier to remove the baby." This description is enraging. In my case, the baby was given an injection to stop his heart and then, through the insertion of laminaria, labor was induced.

I saw my son after delivery. He was beautiful, and his body and head were intact. The process was very humane and the baby was saved from any undue suffering.

I wish that I did not have to go to Kansas in January. I would give anything if my baby could have been born healthy. I think about him every day and miss him terribly. The one thing I am thankful for is that my son was able to die peaceful and painlessly.

KATE HLAVA, *Oak Park.*

That is a letter, from a real woman who had this procedure performed on her this year, that just appeared in our local papers in Illinois.

Mr. President, President Clinton was right to veto this legislation. He was right because Congress, as a body, is not licensed to practice medicine. If the imposition of our judgment serves to condemn women to death or premature disability or cause the kind of harm that Kate Hlava talked about, then we will have clearly failed to live up to our responsibility to act in the best interests of the people who sent us here.

This debate is about whether or not women are going to have the ability to make decisions regarding their own reproductive health, whether they will retain their constitutional rights, and whether they will be able to make decisions regarding their own pregnancies. In the final analysis, it is ultimately about whether or not women are going to retain their current status as full citizens of these United States.

If the issue were creating sound public policy, then the Senate could vote to enact a bill that I cosponsored with Senators FEINSTEIN and BOXER which sought to ban late-term abortions except in situations in which the life or health of the mother is at risk—a requirement that has been set by the Supreme Court. The legislation we are debating today, however, contains no exception to protect the health of the mother, and an inadequate one with regard to protecting her life. I believe that even the sponsors of this legislation are fully aware that under the Supreme Court's decision in Roe v. Wade this bill, as presently written, is unconstitutional.

I believe the sponsors of the legislation would like to pretend that Roe v. Wade does not exist as the law of the country. That is the only way they can argue that this bill is a constitutional measure.

But let's look at the facts. In 1973, the Supreme Court of the United States recognized a woman's constitutional right to have an abortion prior to fetal viability. Roe also established this right is limited after viability at which point States may ban abortions as long as an exemption is provided for cases in which her life or health is at risk. These holdings were reaffirmed by the Court in its 1992 decision in Planned Parenthood v. Casey.

That is the constitutional standard that this legislation has to meet—and it clearly does not. The ban in this bill would apply throughout pregnancy. It ignores the Court's distinction between pre- and postviability. Moreover, this legislation fails to provide an exception in cases in which the banned procedure is necessary to preserve a woman's health. The Supreme Court has clearly stated that such a thing, such a measure is unconstitutional.

You do not have to be a constitutional scholar to figure that out, although, as professor Laurence Tribe has stated for the record, this legislation is plagued by "fatal constitutional infirmities." That is also why, Mr. President, courts in 17 out of 18 cases—Federal and State courts; including a court in my home State of Illinois—have ruled that laws similar to this legislation are unconstitutional.

Mr. President, allow me a moment to look at some of the specifics of the bill. First, I would like to examine the ban's exception to save the life of the mother. Under this legislation, the banned procedure may be performed if a mother's life is endangered by a physical disorder, illness, or injury.

Something is missing here. What if the mother's life itself is endangered by the pregnancy? The legislation is silent with regard to whether an exception exists under those circumstances. If this bill were to become law, the result of a problematic pregnancy could very well be that protecting the life of the fetus—even one capable of living outside the womb on its own for only a few moments—protecting the life of that fetus could result in the death of its mother.

This element of the bill would be particularly devastating to those women who are poor and/or who live in rural areas and therefore might not have access to the top-quality tertiary kind of health care that can make a difference in a life-or-death situation. There is a difference between women who have access to that kind of quality health care and those many women who do not.

The simple fact is if the President's veto is overridden, women's lives will not be fully protected in our country. Women fought for generations for the full protections and guarantees contained in our Constitution. It has only been 78 years that we have been granted the right to even vote. With this legislation, we would turn back the clock—for it does nothing less than abridge women's hard-earned status as full citizens of this country.

Most of the people—and I hate to say this, Mr. President, but it is fact and it must be said—most of the people making the decision to vote on this issue cannot themselves ever experience the trauma of pregnancy or, for that matter, abortion. It is being made by people who themselves are not at risk with regard to this decision.

Moving beyond the issues surrounding the legislation's unsatisfactory lifesaving exception, I would like to address the bill's total lack of an exception for the health of the mother. In Roe, the Court held that even after a fetus was viable, States could not place the interests and welfare of that fetus above those of the mother in preserving not just her life, but her health as well.

Under this bill, women's health would be a complete nonissue. Certain procedures developed in the years since Roe v. Wade to protect pregnant women's health would be unavailable to our physicians, our doctors. So this legislation would simply turn us back to the status of the law as it existed before Roe v. Wade, a time when more than twice as many women died in childbirth as do today.

I want to give you some numbers here, Mr. President. I think it is important to put this in historical perspective as well. At the turn of the century, the death rate in childbirth for women—childbirth was much more dangerous than it is today —but the rate of mothers dying was 600 women per 100,000 live births. By 1970, medical advances had brought that rate down to 21.5 women for every 100,000 live births. That is the point at which Roe v. Wade was decided by the Supreme Court. Today, that number is less than 10 per 100,000 live births.

We expect that women are going to survive a pregnancy, complicated or not. That was not the expectation 100 years ago. It was not even the expectation 20 years ago. The fact of the matter is, that in addition to the medical advances, the ability of physicians to make these kinds of judgments, and women being able to choose, in consultation with their doctors, has served to protect the health as well as the lives of women.

Again, under this bill, women's health will be a complete nonissue. Procedures that have been developed since Roe v. Wade would be made unavailable. Thus, we would be turning back the clock. The Supreme Court said in abortion rulings that a woman has a constitutionally protected right to protect her own health at every stage of her pregnancy. Therefore, I submit that the bill's lack of an exception to preserve the health of the mother, like its incomplete lifesaving provision, would strip women of fundamental rights that are guaranteed to them under the Constitution.

Now, while the term partial-birth abortion is not a medical term—and I

think that has been debated and everybody knows that—a procedure that certainly would be banned under this bill is a procedure known as intact dilation and extraction, or intact D&E. The American College of Obstetricians and Gynecologists, which represents over 90 percent of this Nation's OB/GYNs, opposes this bill. They said:

> The potential exists that legislation prohibiting specific medical procedures, such as intact D&E, may outlaw techniques that are critical to the lives and health of American women.

They are absolutely correct. If this legislation were to become law, women's health would be jeopardized because doctors would be forced to use abortion procedures that may not be the best or the most appropriate for a particular woman.

As was eloquently stated by the speaker before me, Congress presumes to substitute its judgment for the judgment of physicians or doctors in regard to medical practice with this legislation. There can be no denying the fact that if the President's veto is overridden, we will be sending a message that women should be allowed to suffer irreparable harm due to pregnancy even though their doctors have the ability to have prevented that harm.

In opposing this legislation, the American College of Obstetricians and Gynecologists also stated:

> The intervention of legislative bodies into medical decisionmaking is inappropriate, ill-advised, and dangerous.

That is precisely right. Politicians should have nothing to do with this issue. We have no place in the examining room, operating room, or the delivery room. The question of how to deal with the pregnancy should rest squarely with the pregnant woman, her doctor, her family, her God, and not with Members of the U.S. Congress.

Some have argued that we have a responsibility to get involved and ban the procedure because it is not safe. In my view, it is physicians, not Senators, who should be the ones to make that decision. It is their job to do so, not ours.

Some have argued that the procedure to be banned is unnecessary, and yet the legislation contains an exception to save the life of the mother. That exception is there because of the undeniable fact that in some circumstances the procedure addressed by this legislation is necessary—sometimes to protect a woman's health, sometimes to protect her life. But we don't have to look at the bill to know that. Physicians have repeatedly stated this is the case.

What all of this tells me is that this is essentially a medical matter. Doctors must have the freedom to be able to decide which procedures to use in cases of a troubled pregnancy. To the extent that this Congress limits their freedom of action, their freedom of decision, we put the lives and health of women at risk. Consider what the effect of risking women's health in this way could mean for family life in the United States. The inability to address one's own reproductive health as a woman and her doctor believe is necessary, increases the possibility that a woman's reproductive system could be irreversibly damaged and she would be unable to bear children for the rest of her life. Other effects of such a pregnancy on her health may leave a woman unable to care for the children she is already raising.

All of this should make clear that this legislation poses a mortal threat to the ability of women to make choices about their own bodies and their own futures that all Americans ought to be able to make as essential and fundamental freedoms. Choosing to terminate a pregnancy is the most personal, private, and fundamental decision that a woman can make about her own health and her own life. Essentially, choice equates to freedom. The right to choose goes straight to the heart of the relationship of a female citizen and her doctor. Choice is a barometer of equality and a measure of fairness. I believe it is central to our liberty as women.

Now, having said that, I do not personally favor abortion as a method of birth control. My own religious beliefs hold life dear. I would prefer that every potential child have a chance to be born. But whether or not a child will be born must be its mother's decision—not Congress', not ours.

I fully support the choice of those women who carry their pregnancy to term regardless of the circumstances. Some women have died having made a decision that turned out to have been ill-advised under the circumstances. But I also respect the choice of those women who, under very difficult circumstances in which their life and health may be endangered by a pregnancy, choose not to go forward with it. So, while I would like to live in a society where abortions never happen, I also want to live in a society in which they are safe and they are legal.

I am going to put aside for a moment the abstract arguments in favor of sustaining this veto, and bring us back to the real-life situations. I read one letter. The last time I spoke on this issue I related the story of Vikki Stella who lives in Naperville, IL. Vikki has a story as heart-wrenching as the one I started with when I began my remarks on this issue.

I won't go through the details of Vikki's case right now because, frankly, I don't believe aggravating the emotions on this issue serves any good purpose at this point. We have people who have clear disagreement in regard to these situations. I am sure there are stories that can be told for the rest of this day. I, frankly, believe that while the stories illustrate, they should not be used to aggravate or to inflame passions on this issue.

I think it is important for us to remember that for every story of a woman who made the choice and it came out all right, there is another story of a woman who made the choice and it didn't come out all right. I think it is inappropriate for those of us in this room to force those women to die, or alternatively, to lose their reproductive health because of our intervention in their personal and private decisions.

I urge my colleagues to respect the decisions of these women, to respect their freedom as citizens, to respect their fundamental rights as citizens of this great country and give them the respect that goes with the notion that ultimately people want to do the right thing, ultimately people want to choose life, ultimately people want to do the right thing by their children, and that we in this Congress should allow those decisions to be made by women and their physicians in consultation with their family and their God.

I yield the floor.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, would the Senator from Illinois yield for a couple of questions?

Ms. MOSELEY-BRAUN. Yes.

Mr. SANTORUM. First, I say to the Senator from Illinois that I appreciate her comments.

With respect to the first letter that the Senator read, I have a question. Did you say that the baby's heart, when the abortion was done, was injected with digoxin?

Ms. MOSELEY-BRAUN. The letter did not say what procedure was used.

Mr. SANTORUM. I thought that is what you said.

Ms. MOSELEY-BRAUN. I will share the letter with the Senator:

> . . . was given an injection.

Mr. SANTORUM. Into the heart?

Ms. MOSELEY-BRAUN. "In my case, the baby was given an injection to stop his heart and then, through the insertion of laminaria, labor was induced."

Mr. SANTORUM. I suggest to the Senator from Illinois, if you read the definition of partial-birth abortion in the bill, partial-birth abortion is partially vaginally delivering a living fetus.

So if the baby in this case had an injection in the heart to stop the heart, the baby would have died at that point, and then the baby would be removed from the uterus, the baby would be dead, and therefore would not fall under the definition.

So in the case that you mentioned, she did not have a partial-birth abortion by definition. She couldn't, because the baby was dead at that point.

Ms. MOSELEY-BRAUN. I appreciate my colleague allowing for that exception in interpreting her situation in that way.

But I think, if anything, my colleague's argument goes exactly to the heart of my position in this matter, which is that we are forcing physicians to consult the language of this bill in making that kind of a judgment about what kind of procedure is appropriate for which woman in what circumstance.

If a physician has concerns, as you just said, by making an injection, killing the fetus in utero, and then delivering it, falling outside of the exception, well, if that is the case, then I appreciate my colleague making legislative history.

I think, if anything, it points to the fallacy of the nonphysicians in this Chamber making these kinds of medical judgments.

Mr. SANTORUM. I respond to that by saying I think it points out the cruelty, unnecessary cruelty, of doing the procedure that we are attempting to ban here.

What was done by the woman and the doctor in this case, I think, first off, the baby was not delivered, was not outside the mother, and then painfully and brutally killed. The baby was killed in utero by an injection. While I don't like abortion, period, I think that less shocks the conscience of our country than delivering a baby, as in the case of partial birth, most of them being healthy with healthy mothers. In this case, that is not the case. But there is a real distinction here, and what I think your case points out is that there are viable, less-invasive, less-dangerous-to-the-mother alternatives available, even for cases where you have pregnancies that have gone awry, and that are less cruel and barbaric to the baby and less dangerous to the woman.

You talked about preserving maternal health. There is nothing more that I want to accomplish with this bill than preserving maternal health. But we have ample evidence, including from the AMA who testified, that this procedure is not healthy for women, and there are other procedures, such as the one the Senator outlined, that are safer for women who may elect to have an abortion—a legal abortion, which we don't outlaw with this bill. We just say that there are alternatives. The letter you read says, in fact, a viable and often-used alternative to a partial-birth abortion that would continue to be available, which is less risky to the mother, and that is less gruesome, barbaric, and horrific to the child.

Ms. MOSELEY-BRAUN. Again, I know we have irreconcilable differences of opinion about this, but I think it is important to remember that, as we legislate, we are legislating in broad strokes, not in specifics. The problem with this bill, as I have said in my debate, is that one size does not necessarily fit all. Frankly, talking about when her baby's heart stopped, that is not an exact definition of death, either. Those are my words, colloquial terms. We are not physicians. That is the problem. To hamstring and say to a physician that you can make decisions about this, except here, here, here and here will, by definition, cause them to, frankly, shy away from exercising their best medical judgment. We are not physicians and one size does not fit all. That is why I believe the President's veto of this bill was appropriate and correct.

I thank the Chair, and I yield the floor.

Mr. SANTORUM. Mr. President, I yield 3 minutes to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, once again, we are on the floor debating this very difficult issue. I commend the Senator from Pennsylvania for his perseverance in the realities of protecting the rights of women to control their own bodies and our obligation to protect the rights of those unborn. That is something that we will be discussing an extended period of time—probably without any degree of finality.

Nevertheless, Mr. President, we must vote yes or no on this. As a consequence, it is my fervent hope that enough votes will be cast to put an end to this tragic procedure. It is a tragic procedure in its very nature—partial-birth abortion.

The President defended his veto by stating that a partial-birth abortion is a procedure that is medically necessary in certain "compelling cases" to protect the mother from "serious injury to her health."

Unfortunately, the President, in my opinion, was badly misinformed. According to reputable medical testimony and evidence given before this Congress by partial-birth abortion practitioners, partial-birth abortions are, one, more widespread than its defenders admit; two, used predominantly for elective purposes; and three, are never medically necessary to safeguard the mother's health. That is a pretty broad statement, but that is what we are told.

The former Surgeon General, C. Everett Koop, whom we all admired when he functioned in that position, stated he "believed that Mr. Clinton was misled by his medical advisers on what is fact and what is fiction in reference to late-term abortions."

Dr. Koop went on to say, "In no way can I twist my mind to see that the late-term abortion as described as . . . partial birth . . . is a medical necessity for the mother."

In a New York Times editorial, C. Everett Koop added, "Recent reports have concluded that a majority of partial-birth abortions are elective, involving a healthy woman and a normal fetus."

Other physicians agree: In a September 1996 Wall Street Journal editorial, three physicians who treat pregnant women declared that "Contrary to what abortion activists would have us believe, partial-birth abortion is never medically indicated to protect a woman's health or her fertility."

Mr. President, a partial-birth abortion is not only tragic, it is violent. The procedure is one in which four-fifths of the child is delivered before the process of killing the child begins. Sadly, throughout this procedure, the majority of babies are alive and able to move and may actually feel pain during this ordeal.

Dr. Pamela Smith, in a House hearing on the issue, succinctly stated why Congress must act:

> The baby is literally inches from being declared a legal person by every State in the Union. The urgency and seriousness of these matters therefore require appropriate legislative action.

Mr. President, it's not easy for any here to discuss this topic, but unfortunately, there are stark and brutal realities of a partial-birth abortion.

I, and others who support this Act, sympathize with a woman who is in a difficult and extreme circumstance, but no circumstance can justify the killing of an infant who is four-fifths born. My good friend and colleague Senator MOYNIHAN, has said the practice of partial-birth abortions is "just too close to infanticide."

Mr. President, this procedure cannot be defended medically and cannot be defended morally. That is why I hope that this is the one issue that can unite pro-life and pro-choice individuals. I strenuously urge my colleagues to vote in favor of overriding President Clinton's veto of the Partial-Birth Abortion Ban.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I thank the Senator from Alaska for his leadership and support. He has always come to the floor and spoken in strong support of this, and he has been a great and committed warrior in this cause. I thank him for that.

Mr. President, the Senator from California gave her remarks and she talked about women here in town who had horrible things happen to them during pregnancy, and that they were faced with very difficult decisions to make. I understand that those are difficult decisions. She said, in one case, that a baby was well along and was, unfortunately, hydrocephalic, which means water on the brain. They could not do a vaginal, natural delivery. For some reason, she did not want to do a C-section. There were no other options available to save this mother's health. Let me just read to you what a doctor said, a board-certified OB/GYN:

> Sometimes in the case of hydrocephalus, in order to drain some of the fluid from the

baby's head, a special long needle is used to allow a safe vaginal cephalic head-first delivery. In some cases, when the vaginal delivery is not possible, a doctor performs the Cesarean Section. But in no case is it necessary, or medically advisable, to partially deliver an infant through the vagina and then cruelly kill the infant.

Another piece of information that the Senator from California and the Senator from Illinois were talking about is that women would have their health and life at risk with having an abortion, going through with the pregnancy later in term. The facts are just the opposite. The Senator from Illinois said, "Let's not deal with anecdotes, let's deal with facts."

Here is the statistical evidence: At 21 weeks or more—that is the time in which partial-birth abortions are done because they begin to be done at 20 weeks gestation—the risk of death from abortion is 1 in 6,000 and exceeds the risk of maternal death from childbirth, which is 1 in 13,000. You are twice as likely to die if you have an abortion than if you deliver the baby after 21 weeks.

So this whole concept that these procedures are necessary—a procedure that is much more risky than others, much more dangerous than other procedures to the mother—aside from the fact that they are brutal procedures, this is a procedure that is much more risky to the mother; that just the medical evidence shows, the statistics show, that having an abortion—and there are other complications—termination of a pregnancy at more advanced—again, this is from an article, from the Journal of the American Medical Association, August 26, 1998, current edition, which talks about two obstetricians from Northwestern University. It says:

Termination of pregnancy at more advanced gestational ages may predispose to infertility from endometrial scarring or adhesion formation.

It is documented in one study that 23.1 percent of patients had induced midtrimester abortions. Nearly a quarter of those. Again, that is all midtrimester abortions. You hear the argument in this paper and by hundreds of physicians that partial-birth abortion is even more damaging to the cervix and to the future ability for a mother to carry a baby to term.

It continues on:

. . . and from pelvic infections, which occur in 2.8% to 25% of patients following midtrimester terminations. Dilation and evacuation procedures commonly used in induced midtrimester abortion may lead to cervical incompetence, which predisposes to an increased risk of subsequent spontaneous abortion, especially in the midtrimester. Cervical incompetence is more prevalent after midtrimester termination of pregnancy than first trimester termination because the cervix is dilated to a much greater degree.

And other physicians have gone on to say that because this is a procedure that takes 3 days to dilate—you hear so much about this may be necessary to save the life or health of the mother because of some emergency. This is a 3-day procedure. The cervix is dilated over a 3-day procedure, which makes the probability of an incompetent cervix, which means the ability to carry a baby in future pregnancies—it inhibits the ability to carry a baby in future pregnancies. It increases the risk of infection, because now for 3 days the cervix is open. And they are not in a hospital setting. They are out, either back at their home, or in a hotel, waiting for the procedure to be done. This is an unhealthy procedure for women.

If we are concerned about women's health, let's look at the fact about what this does to women's health. Frankly, it sounds to me, if you look at the evidence, there seems to be a sort of pushing aside of all of the nonanecdotal evidence about women's health and putting forth legal arguments about what the Supreme Court says. They are one of three branches of Government, folks.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SANTORUM. Mr. President, I ask unanimous consent to proceed for as long as I may consume under the remaining time left on the other side with the understanding that if anybody comes I will be happy to yield the floor at that point.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANTORUM. Mr. President, they are focusing on legal arguments. The fact of the matter is we are one of three branches of Government. We can put forward things that we believe are constitutional. We can test what they are. I have seen a lot of decisions at the Supreme Court that have moved all over the place on this issue.

It seems very clear to me that we are not providing an undue burden. We are here. We are eliminating one procedure that is not taught in any medical school, that has not been peer-reviewed, that has not been done in a hospital. It is done in clinics, and, in fact, was invented—created—not by an obstetrician.

Someone referred to earlier that Senator FRIST and C. Everett Koop are two people who testified against this procedure. They are not obstetricians. That is true. But the person who invented this procedure is not an obstetrician, either. He was a family practitioner who did abortions.

So the fact of the matter is that C. Everett Koop was a pediatric surgeon—someone who dealt with these little babies, who understands very well what damage is done to these little babies, and, in fact, what is available to save their lives. He knows very well about what he talks about, as does the Senator from Tennessee who has studied this issue thoroughly, and who has reviewed the literature thoroughly.

Let's walk away from the facts for a moment. Let's deal in the realm of what the other side seems to point to—the pictures.

The Senator from California suggested that there will be women here who have had this procedure who will be in the Halls looking at Members as they come in to vote tomorrow to insist that they keep this procedure legal. I only wish, I only wish, that the children who have fallen victim to this would have the opportunity to stand in that Hall and look at the Senators and plead with them to ban this procedure.

We may have one such person which I will talk about in a moment.

But I am going to talk to you first about a little boy—a little boy who was the first child of Whitney Goin. Whitney was 5 months pregnant with her first child. She went in for her first sonogram, and a large abdominal wall defect was detected. She described her condition after learning that there was a problem with the pregnancy:

My husband was unreachable so I sat alone, until my mother arrived, as the doctor described my baby as being severely deformed with a gigantic defect and most likely many other defects that he could not detect with their equipment. He went on to explain that babies with this large of a defect are often stillborn, live very shortly or could survive with extensive surgeries and treatments, depending on the presence of additional anomalies and complications after birth. The complications and associated problems that a surgical baby in this condition could suffer include but are not limited to: bladder exstrophy, imperforate anus, collapsed lungs, diseased liver, fatal infections, cardiovascular malformations, ect.

A perinatologist suggested she strongly consider having a partial-birth abortion. The doctor told her it may be something she "needs" to do. He described the procedure as one where the baby would be partially delivered except for the head, and the pregnancy would be terminated.

The Goins made a different choice.

If there is one thing that those who are listening to this debate—if there is one thing that I hope for that results from this debate today, it is that people who will be watching this debate understand one thing: Whether we pass this override of the President's veto or not, please understand that there are other choices. There are other options—and to follow your heart, to follow your love for your child, and pursue those options, as Whitney Goin did.

The Goins chose to carry the baby to term. But complications related to a drop in the amniotic fluid created some concerns. Doctors voiced to the Goins that the baby's chances for survival would be greater outside the womb. So on October 26, 1995, Andrew Hewitt Goin was delivered by C-section. He was born with a condition in which the abdominal organs—stomach, liver, spleen, and small and large intestines—were outside the baby's body.

Here is the picture. In the incubator there is little Andrew Hewitt Goin.

Andrew had his first of several major operations 2 hours after he was born. Andrew's first months were not easy. He suffered from excruciating pain. He was on a respirator for 6 weeks. He needed tubes in his nose and throat. They continually suctioned his stomach and lungs. He needed eight blood transfusions. His mother recalled, "The enormous pressure of the organs being slowly placed into his body caused chronic lung disease for which he received extensive oxygen and steroid treatments." It broke his parents' hearts to see him suffering so badly.

Remember how we heard about someone who said that it would just break your heart to see your child suffer so badly. And I understand what she feels. But it breaks the hearts of thousands of parents every day to see their children suffer. But that is no reason, that is no reason, to kill your child. It is all the more reason to love that child, to draw that child near to you, and to accept that child as part of your family.

Andrew fought hard to live. And he did. This is Andrew Hewitt Goin at 3 years of age.

I would also note that Andrew will not be the only child for much longer. Next March, the Goins will welcome their second child into the family. Contrary to the misinformation about partial-birth abortion that has been so recklessly repeated, carrying Andrew to term did not affect Whitney's ability to have future children.

I think if you asked Andrew a few years from now whether he would prefer to have suffered that pain or be listening to music, or not be listening to that music, or not be alive today, the answer would be pretty clear.

Not all the stories turn out as happily as Andrew's. Not all of them do. But what does turn out happily in so many more instances is for parents to have the recognition that they have the capacity to love their children even when it is so hard to do that. Whether we override the President's veto is less important than that simple fact that I hope the people listening here will understand.

The next case I want to talk about is Christian Matthew McNaughton. For 4 years, Christian Matthew McNaughton fought the odds. An ultrasound revealed that he had hydrocephalus 30 weeks into pregnancy—again, the condition that has been described as one that is necessary to kill the child and perform a partial-birth abortion, the very case just cited in this Chamber as the reason for keeping this procedure legal.

After Dianne McNaughton learned of their son's dim prospects because of hydrocephaly, which can cause a variety of problems including, because of the water on the brain, the lack of brain development, Dianne asked for information on hydrocephaly. The counselor called doctors on staff and explained the request, and imagine Mrs. McNaughton's surprise when the counselor told her the hospital felt "it was better if she didn't know anything."

Still, Dianne and her husband, Mark, determined to educate themselves on what to expect from now and how to care for a child who had hydrocephaly. They continued to persevere. Life was very stressful for the McNaughtons after the diagnosis. Dianne suffered from nightmares. She never considered aborting the baby, but she worried about how her other two children would be affected by having a disabled child in the home. With the help of Dianne's brother, who happened to be a doctor, the McNaughtons found a specialist in Philadelphia to deliver their baby.

As we learned last year with the case of Donna Joy Watts, another child with hydrocephaly, the Watts family had to go to three hospitals in Maryland before they could find a physician team and a hospital that would deliver their child, because children with hydrocephaly are thought not to have the ability to live and are simply seen as abortion clients; they are seen as disposable.

They were advised again to end their pregnancy. They were warned that hydrocephaly is associated with spina bifida, Down's syndrome, and cerebral palsy. The baby might never achieve bowel or bladder control; he might not be able to move his arms or legs; he might be born blind; he might not even be able to swallow.

The McNaughtons were offered a partial-birth abortion. As a doctor explained it, the baby would be partially delivered, a sharp surgical instrument would be inserted into the base of the skull, and the brains would be extracted—of course, the doctor noted, "what there was of the brain." The rest of the body would then be delivered. This option was rejected.

As if the shock of being advised to undergo a gruesome partial-birth abortion was not enough, one doctor said the shunt surgery to relieve the pressure and the fluid in the baby's brain would not be performed if the child's "quality of life" prospects did not warrant it.

I again go back to the case of Donna Joy Watts just so you don't think this is one isolated case. For 3 days, Lori Watts had to plead with the doctors at the hospital to do a shunt operation to relieve the fluid pressure on the brain, and the doctors refused to because the doctors didn't think she had any chance of a quality life. Donna Joy Watts is here in Washington today. She is 5, almost 6, years of age.

Christian was born June 20, 1993. He was a beautiful, 8-pound baby boy. He did require a lot of medical care. A CAT scan revealed that he suffered a stroke in utero which caused excess fluid to build up in his brain. It also showed that the lower left quadrant of his brain was missing. Within a week of delivery, Christian had his first shunt surgery to drain the fluid. He had a follow-up procedure in 3 months.

As he grew, Christian exceeded everyone's expectations. A baby that doctors initially believed would be blind or could do virtually nothing was a little boy who walked, ran, talked, and sang. He played baseball and basketball. He attended preschool. His heroes were Cal Ripken, Jr, Batman, Spiderman, and the Backstreet Boys. He loved whales and dolphins. His favorite movie was "Angels in the Outfield." And he especially loved his baby sister who was 2 years younger than he. Christian McNaughton brought joy to all who were fortunate enough to know him.

In August of 1997, Christian began experiencing severe head pains. His shunt was malfunctioning. It had to be replaced. He went into surgery and experienced cardiac and respiratory distress in surgery, and he slipped into a coma. Christian fought hard to live but he never recovered. He died on August 8, 1997, at the age of 4.

But if you talked to his parents and you talked to those who knew him and you asked them whether they would have traded those 4 years for denying Christian's humanity by aborting him in such a brutal and inhumane way, they would have said no.

On the anniversary of his death, they entered these memorials to Christian in the Harrisburg Patriot News:

> Christian, we love you. We miss you. We wish we could kiss you just one more time. Until we meet again. Your loving sisters, Meghan and Kelly.

The McNaughtons were worried about whether their children would accept a disabled child in the home. I think it is pretty clear that they accepted him very well, and he added to their lives, and he affirmed their lives.

A letter from the brother:

> Dear Christian. I have a poem for you.
> Blue jays are blue and I love you.
> Robins are red and I miss you in bed.
> Sparrows are black and I wish you were back.
> I am sorry for the bad things I did to you.
> You are the best and only brother I ever had.
> Please watch over us and take care of us.

We wonder whether those children accepted this child. This is a sad story, but it is a joyous story. It is a story of acceptance and love.

One of the things that often confounds me about how people deal with this issue is that people who are in the tradition of the Democratic Party, who have sought for the past 100 years to be inclusive in our society, to welcome those who are on the outside of society, to fight for civil rights, to fight for rights for the disabled, are always fighting to include those who are most vulnerable, now turn their backs to the most vulnerable of all. How does that speak to a country where Hubert

Humphrey once said: "We are judged by how we treat the least of us." Can you think of anything less in our human family than a little baby outside of the mother's womb, 3 inches from life, asking only to be given a chance; prone, with its back to the abortionist, helpless from what might happen next? Just like baby Phoenix, helpless. But, thank God, a moment, finally a moment of conscience hit him and he decided, no, I can't thrust those scissors into this child. And now this temporarily unwanted baby is so loved and wanted somewhere in Texas, by parents who cherish that little girl every day.

The question is, in this debate—you can talk about legal axioms, you can talk about medical theories, you can talk about ethics, you can talk about all sorts of things. The question here is how inclusive are we going to be in our family? As I see the empty seats on this side of the aisle, and I look for the men and women who have given great talks on the floor of the U.S. Senate about the need for rights for the downtrodden: Find me a more helpless creature in our human family, a more downtrodden, helpless, beautiful creation of God than a little baby, his back to the doctor who is going to kill him or her, waiting for the pain to stop.

Mr. President, do we have any time?

The PRESIDING OFFICER. The time of the Senator has expired. All time on debate has expired.

Mr. SANTORUM. Mr. President, I ask unanimous consent the Senator from Kansas be recognized for 4 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWNBACK. Mr. President, I thank the Senator from Pennsylvania for his work and his effort in this area. I want to talk in the brief period of time that I have about the soul of a nation, the soul of our Nation and what happens to it when, once pierced with consciousness that this procedure goes on, allows it to continue to go on.

Government-sanctioned brutality presently exists in America in the form of partial-birth abortion. We know that now. The cold mechanics of partial-birth abortion involve the near delivery of a late-term infant to facilitate the extraction of the child's brains. This procedure will be performed several times this month throughout our Nation, and we know that, and we know that we sanction that as a State-sanctioned form of death.

I speak today of deep concern for the soul of our Nation which is permitting these defiling acts to continue with our consent. Why do otherwise decent nations permit their young to be ripped apart? Why do they permit the shameless repeated acts of cruelty against their weakest and most vulnerable? People of conscience must intervene now.

I draw attention of the people here in this body to the words that adorn the doorways as we walk in. As you preside, you stare up at the words, "In God we trust." As you look across the walkway, "He, God, has smiled on our undertakings." Above this doorway we have "A new order for the ages." All thoughts of our founders; all thoughts, I think, they had towards the newborn child, towards any nature of life in this Nation, that, "In God we trust."

With a nation of such a conscience and such a soul, would it tolerate such a procedure once it knows that this procedure exists? I think not. I urge my colleagues, as we look at this, as we consider the soul of our Nation, would we, should we, can we continue to tolerate this outrageous form of death? History teaches us that tolerated acts of cruelty both brand a nation for infamy and sear its conscience. Tolerance is complicity, and nations will eventually be judged for their failure to stop the course of unbridled cruelty.

America is distinguished around the world basically because of one phrase: America is distinguished for her goodness. I don't think we can excuse this act. No adequate excuse exists for the death of an innocent child by this horrific surgical procedure. This is a human rights abuse of the basest form, which, if condoned, will singe the soul of our Nation now that we know it exists.

We must force ourselves to look squarely into the face of this brutality, regardless of the many sophisticated arguments. I close with a quote from Edward R. Murrow on this point. He would say: "There are not two sides to every story." There are not two sides to this story. Partial-birth abortion must be banned.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MAKING CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 1999, AND FOR OTHER PURPOSES

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of House Joint Resolution 128, the continuing resolution.

I further ask that the joint resolution be read a third time and be passed and the motion to reconsider be laid upon the table, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The joint resolution (H.J. Res. 128) was read the third time and passed.

Mr. STEVENS. I ask that H.J. Res. 128 be spread on the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

H.J. RES. 128

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for the fiscal year 1999, and for other purposes, namely:

SEC. 101. (a) Such amounts as may be necessary under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1998 for continuing projects or activities including the costs of direct loans and loan guarantees (not otherwise specifically provided for in this joint resolution) which were conducted in the fiscal year 1998 and for which appropriations, funds, or other authority would be available in the following appropriations Acts:

(1) the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999;

(2) the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, notwithstanding section 15 of the State Department Basic Authorities Act of 1956, section 701 of the United States Information and Educational Exchange Act of 1948, section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103–236), and section 53 of the Arms Control and Disarmament Act;

(3) the Department of Defense Appropriations Act, 1999, notwithstanding section 504(a)(1) of the National Security Act of 1947;

(4) the District of Columbia Appropriations Act, 1999;

(5) the Energy and Water Development Appropriations Act, 1999;

(6) the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, notwithstanding section 10 of Public Law 91–672 and section 15 of the State Department Basic Authorities Act of 1956;

(7) the Department of the Interior and Related Agencies Appropriations Act, 1999;

(8) the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1999, the House and Senate reported versions of which shall be deemed to have passed the House and Senate respectively as of October 1, 1998, for the purposes of this joint resolution, unless a reported version is passed as of October 1, 1998, in which case the passed version shall be used in place of the reported version for purposes of this joint resolution;

(9) the Legislative Branch Appropriations Act, 1999;

(10) the Department of Transportation and Related Agencies Appropriations Act, 1999;

(11) the Treasury and General Government Appropriations Act, 1999; and

(12) the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999:

Provided, That whenever the amount which would be made available or the authority which would be granted in these Acts as passed by the House and Senate as of October 1, 1998, is different than

that which would be available or granted under current operations, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate: *Provided further*, That whenever the amount of the budget request is less than the amount for current operations and the amount which would be made available or the authority which would be granted in these appropriations Acts as passed by the House and Senate as of October 1, 1998, is less than the amount for current operations, then the pertinent project or activity shall be continued at a rate for operations not exceeding the greater of the rates that would be provided by the amount of the budget request or the amount which would be made available or the authority which would be granted in these appropriations Acts: *Provided further*, That whenever there is no amount made available under any of these appropriations Acts as passed by the House and Senate as of October 1, 1998, for a continuing project or activity which was conducted in fiscal year 1998 and for which there is fiscal year 1999 funding included in the budget request, the pertinent project or activity shall be continued at a rate for operations not exceeding the lesser of the rates that would be provided by the amount of the budget request or the rate for current operations under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1998.

(b) Whenever the amount which would be made available or the authority which would be granted under an Act listed in this section as passed by the House as of October 1, 1998, is different from that which would be available or granted under such Act as passed by the Senate as of October 1, 1998, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate under the appropriation, fund, or authority granted by the applicable appropriations Act for the fiscal year 1999 and under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1998: *Provided*, That whenever the amount of the budget request is less than the amount for current operations and the amounts which would be made available or the authority which would be granted in these appropriations Acts as passed by the House and the Senate as of October 1, 1998, are both less than the amount for current operations, then the pertinent project or activity shall be continued at a rate for operations not exceeding the greater of the rates that would be provided by the amount of the budget request or the amount which would be made available or the authority which would be granted in the applicable appropriations Act as passed by the House or as passed by the Senate under the appropriation, fund, or authority provided in the applicable appropriations Act for the fiscal year 1999 and under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1998.

(c) Whenever an Act listed in this section has
been passed by only the House or only the Senate as of October 1, 1998, the pertinent project or activity shall be continued under the appropriation, fund, or authority granted by the one House at a rate for operations not exceeding the current rate and under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1998: *Provided*, That whenever the amount of the budget request is less than the amount for current operations and the amounts which would be made available or the authority which would be granted in the appropriations Act as passed by the one House as of October 1, 1998, is less than the amount for current operations, then the pertinent project or activity shall be continued at a rate for operations not exceeding the greater of the rates that would be provided by the amount of the budget request or the amount which would be made available or the authority which would be granted in the applicable appropriations Act as passed by the one House under the appropriation, fund, or authority provided in the applicable appropriations Act for the fiscal year 1999 and under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1998: *Provided further*, That whenever there is no amount made available under any of these appropriations Acts as passed by the House or the Senate as of October 1, 1998, for a continuing project or activity which was conducted in fiscal year 1998 and for which there is fiscal year 1999 funding included in the budget request, the pertinent project or activity shall be continued at a rate for operations not exceeding the lesser of the rates that would be provided by the amount of the budget request or the rate for current operations under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1998.

SEC. 102. No appropriation or funds made available or authority granted pursuant to section 101 for the Department of Defense shall be used for new production of items not funded for production in fiscal year 1998 or prior years, for the increase in production rates above those sustained with fiscal year 1998 funds, or to initiate, resume, or continue any project, activity, operation, or organization which are defined as any project, subproject, activity, budget activity, program element, and subprogram within a program element and for investment items are further defined as a P–1 line item in a budget activity within an appropriation account and an R–1 line item which includes a program element and subprogram element within an appropriation account, for which appropriations, funds, or other authority were not available during the fiscal year 1998: *Provided*, That no appropriation or funds made available or authority granted pursuant to section 101 for the Department of Defense shall be used to initiate multi-year procurements utilizing advance procurement funding for economic order quantity procurement unless specifically appropriated later.

SEC. 103. Appropriations made by section 101 shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

SEC. 104. No appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1998.

SEC. 105. No provision which is included in an appropriations Act enumerated in section 101 but which was not included in the applicable appropriations Act for fiscal year 1998 and which by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation, fund, or authority provided in this joint resolution.

SEC. 106. Unless otherwise provided for in this joint resolution or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) the enactment into law of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) October 9, 1998, whichever first occurs.

SEC. 107. Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this joint resolution.

SEC. 108. Expenditures made pursuant to this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 109. No provision in the appropriations Act for the fiscal year 1999 referred to in section 101 of this Act that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 106(c) of this joint resolution.

SEC. 110. Appropriations and funds made available by or authority granted pursuant to this joint resolution may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

SEC. 111. This joint resolution shall be implemented so that only the most limited funding action of that permitted in the joint resolution shall be taken in order to provide for continuation of projects and activities.

SEC. 112. Notwithstanding any other provision of this joint resolution, except section 106, for those programs that had high initial rates of operation or complete distribution of fiscal year 1998 appropriations at the beginning of that fiscal year because of distributions of funding to States, foreign countries, grantees or others, similar distributions of funds for fiscal year 1999 shall not be made and no grants shall be awarded for such programs funded by this resolution that would impinge on final funding prerogatives.

SEC. 113. Notwithstanding any other provision of this joint resolution, except section 106, the rate for operations for projects and activities that would be funded under the heading "International Organizations and Conferences, Contributions to International Organizations" in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, shall be the amount provided by the provisions of section 101 multiplied by the ratio of the number of days covered by this resolution to 365.

SEC. 114. Notwithstanding any other provision of this joint resolution, except section 106, the rate for operations for the following activities funded with Federal Funds for the District of Columbia, shall be at a rate for operations not exceeding the current rate, multiplied by the ratio of the number of days covered by this joint resolution to 365: Corrections Trustee Operations, Offender Supervision, Public Defender Services, Parole Revocation, Adult Probation, and Court Operations.

SEC. 115. Activities authorized by sections 1309(a)(2), 1319, 1336(a), and 1376(c) of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), may continue through the date specified in section 106 of this joint resolution.

SEC. 116. Section 28f(a) of title 30, U.S.C., is amended by striking the words "The holder"

through "$100 per claim." And inserting "The holder of each unpatented mining claim, mill, or tunnel site located pursuant to the mining laws of the United States before October 1, 1998 shall pay the Secretary of the Interior, on or before September 1, 1999 a claim maintenance fee of $100 per claim site.". Notwithstanding any other provision of law, the time for locating any unpatented mining claim, mill, or tunnel site pursuant to 30 U.S.C. 28g may continue through the date specified in section 106 of this joint resolution.

SEC. 117. The amounts charged for patent fees through the date provided in section 106 shall be the amounts charged by the Patent and Trademark Office on September 30, 1998, including any applicable surcharges collected pursuant to section 8001 of P.L. 103-66: *Provided*, That such fees shall be credited as offsetting collections to the Patent and Trademark Office Salaries and Expenses account: *Provided further*, That during the period covered by this joint resolution, the commissioner may recognize fees that reflect partial payment of the fees authorized by this section and may require unpaid amounts to be paid within a time period set by the Commissioner.

SEC. 118. Notwithstanding sections 101, 104, and 106 of this joint resolution, until 30 days after the date specified in section 106, funds may be used to initiate or resume projects or activities at a rate in excess of the current rate to the extent necessary, consistent with existing agency plans, to achieve Year 2000 (Y2K) computer conversion.

SEC. 119. Notwithstanding any other provision of this joint resolution, except section 106, the amount made available for projects and activities for decennial census programs shall be the higher of the amount that would be provided under the heading "Bureau of the Census, Periodic Censuses and Programs" in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as passed by the House, or the amount that would be provided by such Act as passed by the Senate, or the amount of the budget request, multiplied by the ratio of the number of days covered by this resolution to 365.

UNANIMOUS CONSENT AGREEMENT—S. RES. 279

Mr. STEVENS. Mr. President, I further ask unanimous consent that at 7 p.m., the Senate proceed to the consideration of S. Res. 279 regarding Puerto Rico, submitted earlier today by Senators TORRICELLI, D'AMATO and MURKOWSKI. I further ask there be 50 minutes for debate on the resolution equally divided between the majority and minority sides, with 10 minutes of the minority time under the control of Senator SARBANES.

I further ask that upon the conclusion or yielding back of the time, the resolution and preamble be agreed to, and the motion to reconsider be laid upon the table, and that no amendment be in order to the resolution or the preamble.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BROWNBACK). Without objection, it is so ordered.

SENSE OF THE SENATE REGARDING PUERTO RICO

The PRESIDING OFFICER. Under the previous order, the clerk will report the resolution.

The bill clerk read as follows:

A resolution (S. Res. 279) expressing the sense of the Senate supporting the right of the United States citizens in Puerto Rico to express their desires regarding their future political status.

The Senate proceeded to consider the resolution.

Mr. DASCHLE. Mr. President, I am very pleased to join my colleagues in support of this sense-of-the-Senate resolution that recognizes the rights of U.S. citizens in Puerto Rico to decide their political future.

I publicly commend the distinguished Senator from New Jersey and the Senator from Florida for their outstanding leadership in bringing us to this point. Resolutions of this kind and legislation dealing with this particular issue have had a roller-coaster ride in this Congress. Were it not for the tremendous persistence of the Senator from New Jersey and the Senator from Florida, we would not be here tonight. So I publicly express, on behalf of all of our colleagues, our thanks to them for their leadership, their persistence, and their diligence in bringing us to a point where we hope on a unanimous basis this resolution will at long last be adopted tonight.

Very simply, the resolution states that the people of Puerto Rico should be given an opportunity to express their views on the political status of Puerto Rico through some form of plebiscite. President Kennedy once said, "The most precious and powerful right in the world is the right to vote in an American election."

The great Mexican patriot, Benito Juarez, once said that "democracy is the destiny of humanity." In the case of Puerto Rico, democracy delayed is democracy denied. The destiny of Puerto Rico's political future should be in the hands of the people of Puerto Rico. Congress should pass legislation that provides the congressional framework to recognize and implement their decision.

Our Nation is built on democratic principles of equality, opportunity and the right of self-determination.

Yet, American citizens on the island of Puerto Rico lack the rights to express the basic tenet of democracy, a government chosen by the people.

In the words of Thomas Jefferson, "That government is the strongest of which every man feels a part." In regard to Puerto Rico, formal recognition of these democratic ideals is long-overdue. Since the end of the Spanish-American War 100 years ago, we have shared a social, economic, and political union with Puerto Rico. In 1917, Congress granted citizenship to Puerto Ricans. In 1952, the people of Puerto Rico took on local self-government.

In 1963, President Kennedy called for self-determination for the people of Puerto Rico.

More than a quarter of a century later, we are still debating the issue in the Senate as 4 million Americans are denied basic democratic rights. I hope we will all agree that this is simply unacceptable.

The people of Puerto Rico have long demonstrated their patriotism to the United States. Tens of thousands have served in the American military. More than 1,200 Puerto Ricans have died in combat to preserve our democratic way of life.

Mr. President, I support the right of self-determination for U.S. citizens living in Puerto Rico. That is why I am a cosponsor of S. 472, the "United States-Puerto Rico Political Status Act," which provides a congressionally recognized framework for U.S. citizens living in Puerto Rico to freely decide statehood, independence, or the continuance of the commonwealth under U.S. jurisdiction.

As a first step, Congress should adopt this sense-of-the-Senate resolution this year in an effort to resolve the question of Puerto Rico's political status in a fair manner.

We must ensure we provide full democratic rights for all American citizens, including those who live in Puerto Rico.

Mr. President, I yield the floor.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from the great State of Florida.

Mr. GRAHAM. Mr. President, I rise to speak on this sense-of-the-Senate resolution with mixed feelings. I would have much preferred to be speaking tonight in behalf of legislation that would have provided for the first time in the 100-year relationship between the United States and Puerto Rico for a congressionally sanctioned plebiscite giving to the people of Puerto Rico the sense of confidence from respect that their voice would be heard as to their desires for their political future.

Our colleagues in the House of Representatives passed such a plebiscite bill. Unfortunately, after months of hearings, we will not have the opportunity to present from the Energy and Natural Resources Committee to the full Senate such legislation. I commend Senator MURKOWSKI who made a valiant effort to do so, including developing legislation which I think could have been the basis of a consensus on this matter and would have resulted in

a favorable vote in the full Senate and the nucleus of a compromise with the House of Representatives.

But the world goes on. The Governor of Puerto Rico has, with the concurrence of the Puerto Rican Congress, called for a referendum on the political future of Puerto Rico to be held on December 13. It is important that, as a minimal statement of our commitment to the principle of self-determination, we adopt this sense-of-the-Senate resolution and express our position in favor of that plebiscite and indicate that we will take its results with appropriate seriousness.

We recognize, and the sense-of-the-Senate resolution proclaims, that the ultimate decision as to the political future of Puerto Rico will be made by this Congress, but by giving the degree of recognition to the Puerto Rican-called plebiscite on December 13 that this sense-of-the-Senate resolution will do; it will give additional standing, additional confidence, to the people of Puerto Rico that their vote on that day will have an important impact here as we decide what next steps to take relative to the political future of Puerto Rico.

Mr. President, it is clear that we cannot continue with the status quo. A decision is going to have to be made, and I believe made soon, as to what the permanent political status of Puerto Rico will be. We have had this expedience throughout America's history.

After the first 13 colonies, there was the Northwest Ordinance which laid out the basic principle by which future States would be carved out of the large territories of America and joined to the Original States. And that principle included the fact that those new States would join with equal dignity, with equal political rights and responsibilities to the Thirteen Original States. These have been basic tenets of our democracy which now we are called upon to make available to the people of Puerto Rico.

My colleague, Senator TORRICELLI, in comments last week made the statement which I think summarizes the essence of the debate that we are having this evening, and that is, that Puerto Rico represents the unfinished business of American democracy. And it cannot be ignored—unfinished business. We need to set about our task of completing that. And that task begins by a respectful listening to the desires of the almost 4 million U.S. citizens who live on the island of Puerto Rico.

I remind my colleagues that we are not talking about 4 million people who are citizens of a foreign land. Every one of those 4 million people in Puerto Rico is a citizen of the United States of America. These are fellow citizens who have never been afforded the opportunity for a clear congressionally sanctioned expression of their opinion as to what their political future should be. The nearly 4 million U.S. citizens who reside in Puerto Rico are entitled to that opportunity. And this combination of a Puerto Rican congressionally called plebiscite with this degree of sanction by the U.S. Congress is as close as we can reach to that objective in 1998.

The sense of the Senate is the very least that we can do to honor the request of our fellow U.S. citizens in Puerto Rico and send them a clear message that we are listening to their desires.

The sense of the Senate, in conjunction with the House-passed bill, takes an important step in the right direction. I thank all of my colleagues who have cosponsored this resolution. I thank all of those who have been so active in the effort to secure a congressionally sanctioned plebiscite in Puerto Rico.

I say to our fellow citizens in Puerto Rico, we admire your contribution for a century to the development of our land. We admire your patriotism in time of war and your great contributions in time of peace. We extend to you this statement of our respect.

We urge your full participation in the plebiscite on December 13. We will be anxious to receive your statement of your desires for your political destiny. And then I hope that my colleagues here in this Chamber and our companion Chamber will hear with dignity what you have said and will move towards, with your direction, providing a permanent political status for the U.S. citizens on the island of Puerto Rico.

Thank you, Mr. President.

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, first of all, let me thank the Senator from New Jersey for authoring and bringing forth Senate Resolution 279. I am pleased to be a cosponsor of it, along with the chairman of the Energy and Natural Resources Committee, Senator MURKOWSKI; for he and I have, can I say, labored mightily, along with the Senator from Florida, over the last good many months, first of all, to work on the issue of self-determination for Puerto Rico.

I certainly thank all of my colleagues for the cosponsorship of S. 472, legislation that I introduced a year ago that I hoped, as does the Senator from Florida, that we could be voting on at this time—debating it, voting on it, and giving our Puerto Rican friends and fellow citizens the opportunity, a clear direction as it relates to self-determination. That is not going to be the case. Time has not allowed that.

So I hope that by next year the record before the Senate might include the results of another plebiscite in Puerto Rico that the Senator from Florida has just mentioned. That is why the resolution before us today, I think, is very important.

In accordance with their rights of self-determination, the citizens of this Nation—the people of Puerto Rico—acting through their constitutional process and elected representatives, have empowered themselves to conduct a vote based on the record created in the House and the Senate deliberations in the Congress since the 1993 vote.

Since any act of self-determination in Puerto Rico is not self-executing, the resolution of Puerto Rico's political status is a Federal matter that can only be fully and finally determined by an act of Congress. However, in the exercising of its powers in this regard, Congress must be informed by the freely expressed wishes of the citizens of Puerto Rico. Thus, this resolution recognizes that the coming vote will advance the process of self-determination within the framework of our great Nation's Constitution.

Contrary to rumors in Puerto Rico, there was no great intrigue or political reaction to videotapes from the local status campaigns that prevented the Senate from moving forward with legislation at this time. Rather, faced with what we all understand is a very complicated schedule here in the final days before we adjourn, and concern on the part of colleagues on both sides of the aisle, we have brought Senate Resolution 279 to the floor to express at this time, as the House has expressed, an opportunity for the Puerto Ricans to advance the cause of their self-determination. And I hope that the resolution and our vote on it tonight reflects that.

Mr. President, today the Senate ends its prolonged silence on the question of Puerto Rico's political status. The 105th Congress will not end without a Senate response to the 1994 and 1997 petitions of the Legislature of Puerto Rico to Congress. By our action today, the Senate joins the House in responding to those petitions by recognizing the need for further self-determination in Puerto Rico. This is because the 1993 status vote in Puerto Rico did not resolve the status question. Indeed, no option won a majority in 1993.

That is why I sponsored a bill to recognize the need for further self-determination. I thank my colleagues from both parties who joined me by cosponsoring S. 472.

I also want to thank the chairman of the Energy and Natural Resources Committee, Senator MURKOWSKI, for his assistance and leadership to establish a record to support action by the committee and the full Senate on this matter. I regret that the draft chairman's mark has not been acted on, but I applaud his commitment to move the self determination issue forward.

It now appears that by next year the record before the Senate may include the results of another plebiscite in Puerto Rico. That is why the resolution before us today is so very important. In accordance with their right of

self-determination, the people of Puerto Rico, acting through their constitutional process and elected representatives, have empowered themselves to conduct a vote based on the record created in the House and Senate deliberations in Congress since the 1993 vote.

Since any act of self-determination in Puerto Rico is not self-executing, resolution of Puerto Rico's political status is a federal matter that can only be fully and finally determined by an act of Congress. However, in exercising its powers in this regard Congress must be informed by the freely expressed wishes of the residents of Puerto Rico. Thus, this resolution recognizes that the coming vote will advance the process of self-determination within the framework of our great Nation's Constitution.

Contrary to rumors in Puerto Rico, there was no great intrigue or political reaction to videotapes from the local status campaigns that prevented the Senate from moving forward with legislation at this time. Rather, faced with the difficulty of completing a full Senate debate on the draft chairman's legislative mark, this body is doing the right thing by moving forward with a Resolution recognizing the need for further self-determination and recognizing the constraints placed upon it.

I am proud of the Senate today, and I am proud of the people of Puerto Rico for seizing the moment and organizing an act of self-determination that is based upon the arguments heard in the Congressional process which will continue next year. This action is good for Puerto Rico and serves the interests of our entire Nation as we move forward together to seek to resolve the territorial status dilemma that began 100 years ago. I wish our fellow U.S. citizens in Puerto Rico well in exercising their God given right of self-determination. I hope they will join me in trusting that their voice will be heard and that Congress will answer. In America, we have no alternative to democracy and desire nothing more.

I join with my colleagues from Florida, New Jersey—now the chairman of the full committee is here on the floor—to say to our friends and citizens of Puerto Rico that we ask them to go forward with their vote in December. We hope that that is an advanced expression of their desire to advance the cause of statehood, but most importantly to advance the cause of self-determination so that the Congress can have the kind of direction that we hope that vote will bring.

With that, I yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. In view of my colleagues who have waited longer than I have, I simply want to identify the time on either side, and if I may, if there is no objection, I would like to control the time.

The PRESIDING OFFICER. The majority has 20 minutes; the minority has 13 minutes.

Mr. MURKOWSKI. I would be happy to—obviously, I will not speak for the minority—but I would yield whatever time to the minority or perhaps Senator TORRICELLI would like to control the time for the minority.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

PRIVILEGE OF THE FLOOR

Mr. GRAHAM. I ask unanimous consent that Delia Lasanta, Luis Rivera, and Danielle Quintana of my staff and Susan Nisar of Senator D'AMATO's staff be accorded floor privileges for the remainder of today's session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TORRICELLI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. Mr. President, is there a unanimous consent request proposed by the Senator from Alaska?

The PRESIDING OFFICER. If the Senator would withhold for a moment, 10 minutes of the minority's time is already under the control of Senator SARBANES under a previous order.

Mr. TORRICELLI. Mr. President, I ask unanimous consent that I be able to control the remainder of the minority time and the Senator from Alaska control the remainder of the majority time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. How much time does the Senator from New York desire?

Mr. D'AMATO. No more than 5 minutes.

The PRESIDING OFFICER. The Senator from New York is recognized for 5 minutes.

Mr. D'AMATO. Mr. President, let me at the outset say how tremendously proud and pleased I am that one of my great and dear friends, the Senator from Alaska, has worked so hard and so diligently to attempt to advance a cause that this Nation espouses to so many.

We talk about the lack of freedom throughout the world. We talk about democracy. Indeed, it is unfortunate that there are strong forces, people who I know and who I respect, who even at this very time give lip service rather than meaningful and true support for that cause. Senator MURKOWSKI understands that freedom and democracy are not something that just should be for some, but should be for all, and that the right of self-determination is an inalienable God-given right. It is one that this country is founded on. People have paid the greatest price and sacrifice with their life, jeopardizing their families, in the fight for freedom and democracy.

I have to tell Members that it is more than imperative, it is a moral necessity, that we strongly encourage the process of self-determination for 4 million Americans, U.S. citizens who live in Puerto Rico, that they should determine by what rules and what form of government they should live.

We have for years talked about the lack of democracy in all areas of the world. We talk about it in China, Korea, here, there. We should be ashamed that it has taken us so long to come forth with a rather simple resolution, and that it has taken such an incredible effort by the Senator from Alaska and others, to bring us to this point. This is a pittance in comparison to those who have bled, who have sacrificed for democracy, for self-determination.

I hope we understand that we want to encourage people, saying the right to vote, the right to determine one's own destiny, is inalienable.

I would like to have a recorded vote. I would like for us to say: We are going to recognize your hopes and your aspirations and your dreams. It is my hope that the people vote for statehood. But that is their right. They may determine that they want to continue the present situation, but they should have that inalienable right, and we should say to them that we are ready and willing to recognize your choice, your decision, as free men and women, and, yes, that we would be willing and ready to undertake supporting that decision because we respect the inalienable rights of people to make their own determination.

As we mark the 100th anniversary of Puerto Rico becoming a part of the United States, I think it is important to recognize that their sons and daughters have made the supreme sacrifice. They have answered the call of duty. They have been there. And now it is time for us to say: You can be a part of this great Nation, not just as citizens, but as a State, if you choose, if you determine, and then send your response to us.

There are those who say it doesn't matter. Well, it does matter, and it is bigger than partisan politics. It is bigger than Republicans and Democrats. I believe that in the fullness of time what an incredible beacon a 51st State might be. But that is for the people of Puerto Rico to determine. What an example to all of Central America and South America, in terms of sharing our cultures, our values, with this island as part of this great Nation. Certainly at the very least, the people of Puerto Rico, our citizens, should have that right which we declare day in and day out is inalienable for people throughout the country, for all corners of the world.

I congratulate my friends who have brought it to this point, and the Senate

majority leader, and Senator TORRICELLI for his unwavering support of that commitment to justice, to democracy, to self-determination.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. Mr. President, I want to first express my congratulations to Senator MURKOWSKI without whose efforts in committee we would not, today, be discussing this resolution; Senator GRAHAM of Florida, who has labored for so long on this cause; Senator DASCHLE; Senator LANDRIEU; Senator D'AMATO; Senator CRAIG; so many Members of this institution who have taken the cause and interests of the people of Puerto Rico and made them their own.

There are few more solemn responsibilities to come to the Congress of the United States than the issue of admission into this great Union. It is solemn because to join in union is to share a future, to pledge our fortunes, our lives, together. It is a serious occasion because the prospect of joining this Union raises the prospect of "forever," because this Union is indivisible, it is permanent. The judgment to join this Union is made by any peoples and any lands but once in their history, and it is never revisited again.

For 100 years, the people of Puerto Rico and these United States have shared a common history. Our people have fought together, bled together, and died together. Our cultures over a period of time increasingly have merged. Hundreds of thousands, indeed, millions, of people of Puerto Rico have chosen to live among other Americans in these United States. Indeed, the judgment that potentially might be made by the people of Puerto Rico who reside on the island has economically and culturally and even politically already been made by millions of others in how they live and where they choose to live.

The history of the United States for these 200 years has been a history of constant enfranchisement, expanding the right to vote to African-Americans, to women, people 18 years of age, in our own generation to the people of Hawaii and Alaska.

It is part of the great history of this country that we, unlike other nations, were not satisfied to simply enfranchise ourselves but recognized we were the greater and the better people through our expansion. Now we, potentially, visit that question again. It is a judgment that can only be made by the people of Puerto Rico for themselves. This is ultimately their responsibility to decide. But it is the responsibility of this Congress that they have the right to decide. It is a peculiar and tragic irony of history that the first republic to be created out of colonialism might now enter the 21st century in a neocolonialist position.

No American should be content with this contradiction of our own history, and some might claim—some might even accuse—that this U.S. Government is in a position with the people of Puerto Rico that is anything less than full, free, fair, and democratic. Yet, by the definition we have applied for ourselves, it would be difficult to defend against the charge. Written on the walls of this Capitol from the inaugural address of President Harrison in 1841 is, "The only legitimate right to government is an expressed grant of power from the governed."

Yet, Mr. President, every day, the people of Puerto Rico are subjected to fees, rules, regulations, policies, and determinations from this Congress, having no representative who has a right to vote and make a judgment on their behalf. The relationship between the people of Puerto Rico and the United States is a contradiction with everything that we hold dear and every principle upon which this country was founded.

Mr. President, I urge the people of Puerto Rico to take this judgment seriously between this date and December 13 and to think carefully. If they decide to join this Union, this is a moment that they will not visit again. Joining this Union is permanent. If it were my judgment, I, like the Senator from New York, Senator D'AMATO, would choose to join the Union. I believe history has given us the right and the responsibility to face the future together. But I recognize mine is no more than a casual opinion. The decision rests with the people of Puerto Rico alone. The importance of this resolution is that as the people of Puerto Rico vote, they should recognize that the U.S. Congress considers Puerto Rico to genuinely be the unfinished business of American democracy.

The people of Puerto Rico should recognize as they vote that the Congress of the United States is watching, that we recognize our responsibilities and are prepared in the 106th Congress to receive their judgment and make our own decision about the future of this Union.

Mr. President, once again, I want to congratulate Senator MURKOWSKI for having presided over these issues these months, and Senator GRAHAM for his leadership, and each of my colleagues who come to this floor on a bipartisan basis, across ideological lines, uniting in our common belief that there is no right to govern without the consent of the governed and that it is not good enough, in spite of the enfranchisement of all of our people across this continent, that there remains a single exception. America is too good a land, our history is too great, for anyone to be an exception to these great and lasting principles.

Mr. President, I yield the floor.

Mr. MURKOWSKI. Mr. President, it is my understanding that this side has about 15 minutes remaining?

The PRESIDING OFFICER. Yes, 15 minutes.

Mr. MURKOWSKI. I yield 5 minutes to Senator DOMENICI from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, first, let me say that it is most appropriate that we take this action tonight during the second week of Hispanic Heritage Month in the United States. It is quite appropriate, while we are honoring the contribution which Hispanic culture has made to our country, that we are now saying to one group of Hispanics who live on the island of Puerto Rico that we are willing to see you take a vote regarding whether or not you would choose to become the next State.

Mr. President, this resolution affirms that the first step in any change of political status for the community of Puerto Rico rests with the people of that island. When they express that opinion in December—December of this very year—then it will be up to Congress to take whatever steps are necessary to consider that decision.

Let me say that there are a number of Senate heroes with reference to this Puerto Rico resolution. First, I must say that the individuals most likely to recall the difficulties of taking a vote and deciding whether to become a State are the citizens represented by those Senators whose States were last admitted, or close to being last admitted. So the hero tonight is FRANK MURKOWSKI of the great state of Alaska. For anybody wondering, that is not a Hispanic name—MURKOWSKI—but it is a name of European descent, perhaps Polish. He understands what it is for a State to go through this process of deciding whether you are going to become a part of the Union, the United States of America.

I remind the Puerto Ricans—who are Americans in their own right—that Americans think that the United States is so important that we had a Civil War over whether you could unilaterally drop out of the Union once you joined it. So I want you to take it seriously, Puerto Rico, because it is serious. We had the biggest battle within the borders of our own Nation about the issue of keeping this great country together, and you should know that and you should be concerned about that.

Secondly, let me suggest that in the State of New York there is a Senator named Senator D'AMATO, and the Puerto Ricans know that is not a Spanish name either; it is Italian like mine, DOMENICI. But this Senator from New York understands what the Puerto Ricans in his State and the Puerto Ricans in Puerto Rico mean to our Nation. He has always been willing to give the people in Puerto Rico an opportunity to determine their destiny.

And I believe second to Senator MURKOWSKI on our side of the aisle, behind the scenes, Senator D'AMATO has made it very clear that this night should occur—not next year or the year after, but now. So I compliment my good friend and a friend of the Puerto Rican people in New York and across the country. I compliment the Senator for his tremendous, tremendous regard for what Puerto Rico believes is right and fair.

I must say, from the other side of the aisle, it is most interesting that tonight we have a series of Senators with these strange names—MURKOWSKI on our side, D'AMATO on our side, DOMENICI speaking, and TORRICELLI from New Jersey. I compliment Senator TORRICELLI for his vigilant and absolute persistence that something should be done on this issue before we leave here.

So tonight, without any question, the Puerto Rican people can already say across the island and throughout the rest of America, because it is a foregone conclusion, that the Senate will vote on this resolution propounded by the Senator from Alaska, Senator MURKOWSKI. Frankly, it will pass overwhelmingly. There will be no dissenting votes tonight, because for those who would like to dissent, they have already decided that they are not going to make a point of it.

As a consequence, we are going to approve this in just as formidable a way as if we had voted, when the U.S. Senate says without a dissenting vote tonight, that we agree with this resolution.

Mr. President, once again, many of us came here from around the world, or our parents or grandparents did. And we know the validity and the great value of America. We hope the people in Puerto Rico understand that and act accordingly.

I yield the floor.

Mr. MURKOWSKI. Mr. President, I believe Senator HATCH would like recognition for 3 minutes.

The PRESIDING OFFICER. The Senator from Utah is recognized for 3 minutes.

Mr. HATCH. Mr. President, I have been to Puerto Rico. I have to say it is a beautiful land.

These are our fellow citizens. They have to make this determination. Of course, we should give them that right.

I have heard both arguments within Puerto Rico. Some feel it is a great idea to have statehood. Others don't think it is quite so great. There are disadvantages to becoming a State. There is no question about it. But there are great advantages as well.

All we are doing here this evening is acknowledging as Members of the U.S. Senate the right of our fellow U.S. citizens in Puerto Rico to express democratically their views regarding their future political status through a referendum or other public forum, and to communicate those views to the President of the United States and to the Congress.

That is the least we could do. These are good people. These are proud people. These are people who have contributed to this country—and who will contribute to this country—even though their status has been different from other citizens.

I personally endorse and support this resolution here this evening. I hope and I know that it will pass. It will pass unanimously, which I think is the high tribute to the people of Puerto Rico and to those on both sides of this issue down there.

I congratulate all of those who have worked so hard to get this done, especially Senator MURKOWSKI, Senator TORRICELLI, the others who have been mentioned, Senator D'AMATO and Senator DOMENICI.

This is a wonderful evening, a wonderful day, and something that is long overdue. I congratulate my colleagues for having accomplished this today.

I yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, first of all, in the concluding minutes that we have before our vote, let me recognize from the House of Representatives our good friend, CARLOS ROMERO-BARCELÓ, who is with us watching this historic action of the U.S. Senate. It is a pleasure to have you with us, my friend. Your contribution to these moments have been immeasurable, and your people of Puerto Rico can be very proud of your contribution in bringing this matter from the House of Representatives to the floor of the U.S. Senate tonight.

Mr. President, let me acknowledge my good friends and colleagues who have had such a significant role in moving this to where we are today. Of course, that would include Senator TORRICELLI and Senator D'AMATO.

I think it is important to recognize the constituency associated with many of the Members who have come forth as initial sponsors. Senator LAUTENBERG referred to Senator HATCH; my good friend from Hawaii, Senator AKAKA; Senator DASCHLE; Senator LANDRIEU; Senator LIEBERMAN; Senator GRAHAM of Florida; and Senator DOMENICI, and there are many, many more.

But the significance of the commitment, particularly of Senator D'AMATO and Senator TORRICELLI, I think represent an extraordinary sensitivity as brought out in the statements not necessarily individually of their feeling towards what America is all about but perhaps better in the comments that were made by the Senator from New Mexico, Senator DOMENICI, who indicated, as you look at the names of sponsors on this legislation, that you have a potpourri, if you will, of the mixture of Americans committed to democracy.

I must acknowledge in my thanks to my colleagues that this Senator from Alaska does not have a large Puerto Rican constituency. But I do have a long memory.

Alaska has been a State since 1959. I grew up in a territory. We had taxation without representation. My father used to say he felt good about being able to write on his income tax form in a red pen "filed under protest, taxation without representation." But that is the extent of what made him feel good.

I can recall seeing neighbors when I was too young to go into the draft being drafted. We were second-class citizens, Mr. President. We had special identification cards to leave the territory of Alaska to visit the State of Washington. It was quite a blow to the sensitivity of American citizens, and as a consequence we have a situation with regard to Puerto Rico today.

Mr. President, I would like to have the clerk reserve at least 2 minutes of my time remaining for one of my colleagues who is here with me.

The PRESIDING OFFICER. The Senator has 4 minutes 30 seconds remaining.

Mr. MURKOWSKI. Mr. President, if I may, I want to specifically cite the fact that I support this resolution. I fully support the objective of this resolution in reaffirming the right of our fellow citizens in Puerto Rico to express their desires on political status through popular referenda and to communicate those desires to the federal government. I also agree that the federal government should carefully review and consider any such communication. This resolution is fully consistent with the objective of the draft chairman's mark that I circulated immediately prior to the recess.

I want to thank my colleagues who reviewed the draft chairman's mark and who provided me with comments and suggestions. As I stated in my press release last week, I do not think that there will be time to fully consider the legislation this session, but I think we have made considerable progress. This resolution is fully consistent with the philosophy of my draft that the initiative for any political status change lies exclusively with Puerto Rico.

During this Congress, the House of Representatives has passed legislation requiring a referendum in Puerto Rico. Similar legislation was introduced in the Senate. I stated at the outset of this Congress, that I consider the matter of political status one of the most important constitutional responsibilities of the Congress and of my committee.

I cautioned when those measures were introduced that as much as some

would like to see legislation enacted in this centennial year of Puerto Rico coming under United States sovereignty, this was an extraordinarily complex and important issue and deserved full and fair consideration because I recall what happened in my own State of Alaska. It took a long time. Although the committee conducted a series of meetings in Puerto Rico at the beginning of the Congress, I made the decision that we would wait for the House to pass legislation before we began the formal committee process. I made that decision so that our committee would have all the various proposals before us.

By the time the House passed its legislation, it was already clear that it would be very difficult to resolve the many questions presented by the legislation this year. I want to emphasize the words "this year," because I think there has been too much emphasis on timing and not enough on substance.

I am committed to the enactment of responsible legislation and not simply to the enactment of legislation this year.

Nonetheless, and despite the limitations of the Senate schedule and the importance of the other measures pending before the committee, we held a series of workshops, oversight hearing, and legislative hearings. I circulated a draft chairman's mark prior to the August recess to my colleagues on the committee. I asked for a review and comments. Several Members submitted very thoughtful amendments to the draft chairman's mark. While I have directed the staff to continue to work on these amendments, I do not see that attempting to force the legislative process would either be wise or helpful in view of the remaining time left in this session.

The initial workshop heard from the Governor and the leadership of the three recognized political parties in Puerto Rico. The Governor expressed the desire of the government of Puerto Rico to obtain an expression from the federal government of status alternatives. The parties agreed that so long as each political party is able to craft its own definition, those definition, those definitions would be political statements and as a result, no referendum would provide the clarity that Congress would want.

The first oversight hearing considered the fiscal and economic implications of any change in status. Those proceedings shed considerable light on some of the difficulties involved in any transition to prepare Puerto Rico for either consideration of an Admissions Act or for the withdrawal of United States sovereignty.

The second oversight hearing focused on the individual issues involved in separate sovereignty, either as full independence or in some form of free association. In addition to a consideration of the issues, especially that of citizenship, the hearing also served to focus on sovereignty as the test for consideration of those issues.

Those hearings and the legislative hearing that followed demonstrated how unique the present circumstances of Puerto Rico is and how difficult any change in status will be. The hearings also demonstrate that the federal government is responsible for the present situation and the creation of the obstacles that must be overcome prior to any change in status.

A major defect, in my mind, in the measures pending before the committee and in the definitions used in past referenda in Puerto Rico, is the failure of the definitions for Statehood or Independence to acknowledge that Puerto Rico is not presently prepared for federal consideration of either option.

There is a very complex and difficult process involved before either option could be implemented, as our hearings demonstrated.

For Statehood, that process would entail, at a minimum, significant consideration of several entitlement programs as well as the extension of the Internal Revenue laws in concert with a complete overhaul of Puerto Rico's local tax code. This is not a simple matter and I do not expect that it can be done rapidly. Only after that transition is complete should Congress consider fully extending the Constitution to Puerto Rico.

As my colleagues know, the Constitution does not fully apply to Puerto Rico. Puerto Rico has never been "incorporated" into the United States. Alaska and Hawaii were fully incorporated well before the first Admissions Act was even introduced. Only after the debate on incorporation has concluded and when the Constitution is fully applicable in Puerto Rico can the political debate on admissions begin.

The point that I tried to achieve in my draft chairman's mark, is that Congress has created a series of obstacles to the achievement of any change in political status. I think we owe our fellow citizens an explanation of what the process is likely to be to overcome those obstacles so that they can express their desires with a clear understanding of the process that lies before them.

A second major defect in the legislation was that it required Puerto Rico to vote on federally defined options. How and whether Puerto Rico seeks to petition the Congress should not be dictated by the federal government. If we are serious about local self-government, then we should be willing to allow the local government to determine how to respond to the desires of its constituents. Not all territories conducted referenda on future political status and none were ever required to hold one by the federal government. As part of the Enabling or Admissions Act, some territories were required to agree to the terms of a particular Statehood proposal, but that came after Congress had enacted the legislation to provide for their admission.

We should not constrain Puerto Rico in how it seeks to approach a request to the federal government. Perhaps they will continue to use referenda, perhaps they will use resolutions of the legislature, perhaps they will use petitions. Each territory has approached the process from its own political perspective and we should not dictate to our fellow citizens in Puerto Rico what process they must use.

As a result of our workshops and hearings, I circulated a draft chairman's mark prior to the August recess to my colleagues on the committee. I asked for their review and comments. Several Members have submitted very thoughtful amendments to my draft chairman's mark. While I have directed staff to work on those amendments, I do not see that attempting to force the legislative process would be either wise or helpful.

I support the objectives of this resolution and they are fully consistent with the framework of my draft chairman's mark. There is no question that Puerto Rico, either through popular referenda or resolution of the legislature or simple petition, has the right to express its desire on political status. There should also be no question that the federal government should respond to any such expression seriously and with due consideration.

The government of Puerto Rico has now enacted legislation calling for a referendum on December 13 of this year. In developing the definitions that will be placed before the voters, the draftsmen had before them the language contained in the House-passed measure, the Senate-introduced measure, and my draft chairman's mark. They also had the testimony of the administration.

They chose to adopt definitions based on their own judgement. I want to make absolutely clear that even had the draft chairman's mark been enacted, Puerto Rico would not have been obliged to adopt the definitions contained in it. My draft mark was strictly advisory as will be the results of any referendum. That is as it should be. All we could hope to do would be to provide some guidance as to what this Congress thinks the process would likely be. Just as we can not bind a future Congress, neither can an advisory referendum bind us.

I believe that we still owe our fellow citizens in Puerto Rico a fair statement of the alternatives and process involved in future political status so that they can express their desires in a meaningful way. Passage of this resolution does not in any sense diminish the importance of providing that information. This resolution does reaffirm that

the initial step for any political status change rests with out fellow citizens in Puerto Rico. Only they can decide whether and when to petition the Congress for consideration of a change in status. Only Congress can consider the legislation necessary to remove the obstacles to such a status and, in the philosophy of the Northwest Ordinance, prepare Puerto Rico for consideration of that status.

I think that ultimately we need to clarify that process in legislation. Time is running out for this session of Congress, but I intend to resume where we are now at the beginning of the 106th Congress. In the interim, I think we have made considerable progress in clarifying the issues through our hearings and in the reactions to the draft chairman's mark. This resolution is completely consistent with that progress.

My best wishes go to the Governor and the people of Puerto Rico as they prepare to express their preference on the December 13 referendum vote.

I yield the time I have remaining to the senior Senator from Alaska, Mr. STEVENS.

Mr. STEVENS. Mr. President, I thank my colleague from Alaska.

I come to the floor to congratulate him and the other members of his committee for the action they are taking tonight to recognize the continuing support of the Congress for the determination by the people of Puerto Rico of what their future status should be.

The first resolution dealing with Alaska was introduced in the Congress in 1913. Final action on statehood for Alaska took place in 1958. We became a State in 1959, as Senator MURKOWSKI said. It is a long process to seek to change the political status of a portion of the United States, and Puerto Rico is a portion of our country. Its people really deserve the opportunity to express themselves on what their future should be.

So my congratulations to everyone for moving this resolution forward. I hope the day will come when I am still in the Senate that we can vote on statehood for Puerto Rico.

Mr. TORRICELLI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. How much time remains?

The PRESIDING OFFICER. The Senator from New Jersey controls 4 minutes 40 seconds.

Mr. TORRICELLI. Mr. President, let me finally, in conclusion, also thank CARLOS ROMERO-BARCELÓ. The fact that this Senate has come together in this extraordinary judgment would not have been possible without his leadership. And also, as Senator MURKOWSKI said, Governor Pedro Rossello has been such an important person in building this very broad coalition. To the Governor, I offer my very sincere congratulations. He is an extraordinary man who has given great service to his people in making this night possible. CARLOS ROMERO-BARCELÓ, your service has been nonetheless a great credit to the people of Puerto Rico.

Mr. President, I yield the remainder of my time to the Senator from Connecticut, Mr. LIEBERMAN.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 4 minutes.

Mr. LIEBERMAN. I thank the Chair. I thank my friend from New Jersey particularly for his leadership in bringing this resolution forward and to express my own pleasure at being a cosponsor along with a bipartisan group of cosponsors.

Mr. President, very briefly, this resolution is about principle. It is not about politics. It is about the principle of self-determination, which was at the heart of the creation of America—the principle of self-determination, democracy, self-rule. It has continued throughout our history to today, when it remains a fundamental priority element of our foreign policy toward other peoples and other nations.

Really, what this is about is taking that fundamental American principle which we are eager to apply around the world and applying it to 4 million of our fellow American citizens who live on the islands that constitute Puerto Rico, who served and died in defense of America's freedom in disproportionate numbers. They deserve the right to become fully free, determine their destiny, participate fully, if they choose and how they choose, in our democracy.

Senator MURKOWSKI has been a very steadfast leader in this effort. It didn't get as far as he or we wanted, but this resolution at least gives us the possibility, before the 105th session adjourns and prior to the referendum that will be held in Puerto Rico in December, to say as Members of the Senate of both parties we welcome the exercise and recognize the right of our 4 million fellow Americans in Puerto Rico to express themselves to us and that we will review any such communication that results from the vote that they hold in December. It is the least we can do to be true to our principles.

I thank the Chair and I yield the floor.

Mr. LAUTENBERG. Mr. President, I rise in strong support of this resolution. I am pleased that we are passing this resolution on the second day of Hispanic Heritage Month because Puerto Ricans, like all Hispanic Americans, have made a great contribution to the culture and economic growth of America.

There are nearly 4,000,000 American Citizens who live in the Islands of Puerto Rico. They are an integral part of our nation, they pay taxes and serve and die in our nation's military. Furthermore, there are millions of American Citizens with Puerto Rican heritage who live on the continent, hundreds of thousands of whom live in New Jersey. In many ways, New Jersey is a second home for Puerto Ricans.

I strongly believe that the American citizens who live in Puerto Rico should have the right to a democratic vote to determine the future status of these islands. I am pleased that such a referendum will take place in December. After this vote, Congress should take the appropriate legislative action that reflects the will of the American citizens living in Puerto Rico. And I will work with my colleagues to make sure that this happens.

I urge my colleagues to support this resolution.

The PRESIDING OFFICER. Who seeks recognition?

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I see no other Senator wishing to speak.

I believe there is no more remaining time on our side.

The PRESIDING OFFICER. The Senator from Alaska controls 2 minutes; the Senator from New Jersey controls 1 minute 45 seconds.

Mr. TORRICELLI. Mr. President, I yield back my time.

Mr. MURKOWSKI. Mr. President, I would be very pleased, if there is no other Senator wishing recognition, to yield back the remainder of our time.

The PRESIDING OFFICER. Under the previous order, the resolution and the preamble are agreed to.

The resolution (S. Res. 279), with its preamble, reads as follows:

S. RES. 279

Whereas nearly 4,000,000 United States citizens live in the islands of Puerto Rico.

Whereas 1998 marks the centenary of the acquisition of the islands of Puerto Rico from Spain;

Whereas in 1917 the United States granted United States citizenship to the inhabitants of Puerto Rico.

Whereas since 1952, Puerto Rico has exercised local self-government under the sovereignty of the United States and subject to the provisions of the Constitution of the United States and other Federal laws applicable to Puerto Rico;

Whereas the Senate supports and recognizes the rights of United States citizens residing in Puerto Rico to express their views regarding their future political status; and

Whereas the political status of Puerto Rico can be determined only by the Congress of the United States: Now, therefore, be it

Resolved,

SECTION 1. SENSE OF THE SENATE REGARDING A REFERENDUM ON THE FUTURE POLITICAL STATUS OF PUERTO RICO.

It is the sense of the Senate that—

(1) the Senate supports and recognizes the right of United States citizens residing in Puerto Rico to express democratically their views regarding their future political status through a referendum or other public reform,

and to communicate those views to the President and Congress; and

(2) the Federal Government should review any such communication.

Mr. MURKOWSKI. I thank the Chair.

I move to reconsider the vote and lay that motion on the table.

The motion to lay on the table was agreed to.

CONSUMER BANKRUPTCY REFORM ACT OF 1998

The PRESIDING OFFICER. The clerk will report the pending business.

The assistant legislative clerk read as follows:

A bill (S. 1301) to amend title II, United States Code, to provide for consumer bankruptcy protection, and for other purposes.

The Senate resumed consideration of the bill.

AMENDMENT NO. 3600 TO AMENDMENT NO. 3559

(Purpose: To provide for protection of retirement savings)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. GRAHAM, Mr. DURBIN, and Mr. GRASSLEY, proposes an amendment numbered 3600 to amendment No. 3559.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

[The amendment was not available for printing. It will appear in a future edition of the RECORD.]

Mr. HATCH. Mr. President, I am pleased to offer this amendment cosponsored by Senator CHARLES GRASSLEY of Iowa on our side and Senator BOB GRAHAM of Florida and Senator DICK DURBIN on the Democrat side, all of whom I would like to thank for their hard work on this important matter.

The Hatch-Graham-Grassley-Durbin pension amendment, among other things, is designed to do the following: Provide a uniform exemption for all types of tax-favored qualified pension plan assets in bankruptcy including Roth IRAs whose status under current bankruptcy law is uncertain, protect retirement assets that are in the process of being rolled over into a new qualified plan, and protect loans from pension funds in bankruptcy.

Under present law, retirement plans which have received a determination letter from the IRS pursuant to section 7805 of the Internal Revenue Code of 1986, as amended, which have not been revoked by a court or by the IRS have, in many instances, been held by the bankruptcy courts not to be qualified plans. This holding allows the trustee for the bankruptcy estate to seize the interest of the bankrupt participant in the plan.

Similarly, if a retirement plan that is not eligible to receive a favorable determination letter but has in all other respects operated under the ERISA provisions and has not had its status revoked by a court or by the IRS, such a plan has been found by the bankruptcy court not to be a qualified plan.

This amendment addresses this problem by providing, 1, that if a plan has received a favorable determination letter that is in effect, the plan is presumed to be exempt from the bankruptcy estate; and, 2, if a plan is not eligible for a determination letter, the plan may be exempt from the bankruptcy estate if there has been no prior determination by a court or the IRS to the contrary and the plan is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986, as amended.

Further, Mr. President, under present law, if there is a direct transfer of an individual's retirement funds by the trustee of a plan exempt from the bankruptcy estate to the trustee of another retirement plan that is exempt from the bankruptcy estate, there is a question as to whether these retirement funds are exempt while in transit. It is possible that a bankruptcy court may hold that such funds are in a "pay status" and thus subject to attachment by the bankruptcy trustee. If there is a distribution of a plan's assets to a distributee and the latter within 60 days transfers them to another qualified plan, ERISA rules do not treat that as a distribution.

There is some question whether these funds in transit are protected from the bankruptcy estate. If a participant is in bankruptcy when either of these types of transit occur, the bankruptcy trustee may be authorized by the bankruptcy court to seize the funds. The result would be to severely reduce or wipe out the participant's retirement funds. This is contrary to sound public policy.

The proposed amendment provides that a direct transfer of retirement funds from one qualified retirement plan to another shall be exempt from the bankruptcy estate. In addition, it provides that eligible "rollover" funds from a qualified retirement plan shall be exempt from the estate if rolled over to another qualified plan within the allowed 60 days of the initial distribution.

Finally, on the issue of qualified plan loans, the amendment provides that qualified plan loans outstanding when the participant is in bankruptcy are not dischargeable, and that payroll deductions used to repay plan loans are not stayed by the court.

The retirement savings of hundreds of thousands of elderly Americans are at risk in bankruptcy proceedings. In 1997, an estimated 280,000 Americans age 50 and older filed bankruptcy. Almost one in five bankruptcy cases involve one or both petitioners who are 50 or older. This amendment has the full support of the AARP, which has stated that:

The accumulation and preservation of retirement funds represents an important national goal.

I could not agree more. With this national goal in mind, I urge my colleagues to support this amendment.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Colorado?

Mr. DURBIN. Mr. President, let me say I am happy to support this amendment. I am happy to be a cosponsor with my friend from Utah, Senator HATCH. I had prepared an amendment on this subject and I am happy to join him in making this a bipartisan effort.

I will not take any time because I know a number of Members have to return to their families this evening, but I concur with him, with the increased number of Americans over the age of 50 filing for bankruptcy, this is a problem which we should address and address directly. It is not only to the benefit of senior citizens who are saving for their own retirement, it is certainly to the benefit of their families who are concerned that they be allowed to live in independence and security in their retirement years. We have traditionally given special consideration to 401(k) plans. This amendment will extend that consideration to IRAs and other vehicles that allow people to put savings away for their future retirement.

I am happy to support this and I am happy to say that the amendment which I offered, and I am sure this one as well, had the support of the American Association of Retired Persons and virtually every major senior citizens group in the country.

I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Vermont.

Mr. LEAHY. Mr. President, when the distinguished Senator from Illinois first talked about this amendment, I was telling him I thought he had a winner on his hands. I could not imagine anybody opposing it. I was delighted to see the distinguished senior Senator from Utah has also adopted the same idea of the Senator from Illinois. I think it is an excellent piece of legislation.

I suspect it will pass unanimously. I realize that is one of the reasons why it is brought up as a bed-check vote at 8 o'clock at night tonight, because everyone knows the Senator from Illinois

has a good idea and the Senator from Utah has a good idea. Those are the kind that we use for bed-check votes.

I should tell the American people, though, notwithstanding that, it is a very valuable piece of legislation and I am delighted to see it and I am going to be very happy to vote for it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Indiana (Mr. COATS), the Senator from Wyoming (Mr. ENZI), the Senator from North Carolina (Mr. HELMS), the Senator from Alabama (Mr. SESSIONS), and the Senator from Alabama (Mr. SHELBY) are necessarily absent.

Mr. FORD. I announce that the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Massachusetts (Mr. KERRY), the Senator from Michigan (Mr. LEVIN), and the Senator from New York (Mr. MOYNIHAN) are necessarily absent.

I further announce that, if present and voting, the Senator from New York (Mr. MOYNIHAN) would vote "aye."

The result was announced—yeas 89, nays 0, as follows:

[Rollcall Vote No. 276 Leg.]

YEAS—89

Abraham	Durbin	Lugar
Akaka	Faircloth	Mack
Allard	Feingold	McCain
Ashcroft	Feinstein	McConnell
Baucus	Ford	Mikulski
Bennett	Frist	Moseley-Braun
Biden	Glenn	Murkowski
Bingaman	Gorton	Murray
Bond	Graham	Nickles
Boxer	Gramm	Reed
Breaux	Grams	Reid
Brownback	Grassley	Robb
Bryan	Gregg	Roberts
Bumpers	Hagel	Rockefeller
Burns	Harkin	Roth
Byrd	Hatch	Santorum
Campbell	Hutchinson	Sarbanes
Chafee	Hutchison	Smith (NH)
Cleland	Inhofe	Smith (OR)
Cochran	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kempthorne	Stevens
Coverdell	Kerrey	Thomas
Craig	Kohl	Thompson
D'Amato	Kyl	Thurmond
Daschle	Landrieu	Torricelli
DeWine	Lautenberg	Warner
Dodd	Leahy	Wellstone
Domenici	Lieberman	Wyden
Dorgan	Lott	

NOT VOTING—11

Coats	Inouye	Moynihan
Enzi	Kennedy	Sessions
Helms	Kerry	Shelby
Hollings	Levin	

The amendment (No. 3600) was agreed to.

MODIFICATION OF AMENDMENT NO. 3595, AS MODIFIED

Mr. SANTORUM. Mr. President, I ask unanimous consent that amendment No. 3595, previously agreed to, be modified with the change that I now send to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The modification follows:

Strike pages 33 through 42.

AMENDMENT NO. 3595

Mr. GRASSLEY. Mr. President, I ask unanimous consent that amendment No. 3595 be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3595) was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

PARTIAL-BIRTH ABORTION BAN ACT OF 1997—VETO

Mr. DOMENICI. Mr. President, I rise to speak in support of the overriding of the President's veto on partial-birth abortion. Before I give my comments and observations, I want to look across the Senate to the freshman Senator from Pennsylvania, RICK SANTORUM. I want to say to him that when he spoke on this issue today, and when he spoke on this issue the last time we debated it here, I was never more proud of a Senator than I was to observe him and watch him. I can assure him that even though he may not have won the last time in terms of what we are doing in a veto override, and he may not win this time, there are millions of Americans who have watched him. Whether they were concerned about this issue or not, if they watched for a while, they are concerned right now. You can't ask for anything more.

I read the Senator's wife's book with reference to the problems they had with reference to an abortion they had no control over, an early delivery of a child that died. I am so proud, I can hardly express it tonight.

I want to once more congratulate him for what he has done here on the floor of the Senate. It is not easy, but he did it with great, great style.

Mr. President, this debate is about infanticide. Frankly, I didn't dream that concept up. There is a very distinguished Senator from the State of New York—I know Senator D'AMATO from New York is here and I think he would concur when I say a distinguished Senator named Senator MOYNIHAN—who looked at this problem and it didn't take him very long. We talk all around it. He talked right to it when he said this is infanticide.

So this debate is about humanity and necessity. The procedure of partial-birth abortion, to put it bluntly, is inhumane.

By now, many Americans are uncomfortably aware of the details of partial-birth abortion. They have heard the testimony of doctors who performed this procedure, nurses who witnessed this procedure, and they have most likely seen informational ads or read descriptions of this procedure. Maybe they have even watched us debate this issue on prior occasions. So I am not going to go through the details of the procedure. I will only say that, at a minimum, it is cruel and inhumane. I find it ironic that our Constitution, via the eighth amendment, protects criminals from cruel and unusual punishment; however, that same amendment does not protect innocent babies when it comes to cruel and inhumane procedures that are known as partial-birth abortions.

Proponents of partial-birth abortion claim that the procedure is rare, occurring only about 500 times a year. However, that is simply not true. The number of partial-birth abortions is closer to between 3,000 and 5,000 a year. In New Jersey alone, at least 1,500 procedures are done each year. Besides being inhumane and quite prevalent, partial-birth abortion is also unnecessary.

Opponents of this legislation argue that partial-birth abortion is necessary to protect the health of the mother. However, most experts say this is also simply not true. According to more than 500 doctors nationwide, who make up what is called the Physicians' Ad Hoc Coalition for Truth, it is never—I repeat never—medically necessary to perform a partial-birth abortion to protect the health or fertility of the mother. A former Surgeon General, who we admire and respect when he sort of agrees with our views but we ignore him when he disagrees, Surgeon General Everett Koop, has also stated that partial-birth abortion is never medically necessary to protect the mother's health or fertility. So amidst all this evidence, how can the opponents of this bill tell the American people that partial-birth abortion is sometimes medically necessary?

If this procedure is not medically necessary, why do we allow it? As I told you, Mr. President, this debate is not about Roe v. Wade or the choice of life. It is not about any of those things. But it is about a baby, a life that is destroyed in a cruel and inhumane way. It is about a life that is unnecessarily destroyed and need not happen. It is for these reasons that I will gladly vote to override the President's veto of the Partial-Birth Abortion Ban Act of 1997.

I suggest tonight to my good friend, the leader of this cause, that if at first you don't succeed, try, try again. If indeed that means that you have already tried three times, then try and try again. What is so patently right will soon prevail.

I yield the floor.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from New York is recognized.

Mr. D'AMATO. Mr. President, I associate myself with the remarks made by my distinguished friend and colleague, the great senior Senator from New Mexico, Senator DOMENICI. He touched

on the eloquence and passion and the rightness and the moral certainty of Senator SANTORUM's very cogent argument and presentation. This entire subject, I believe, is uncomfortable for all of us. But it is so necessary. Senator DOMENICI spoke about the great senior Senator from New York, and I say that because I have great admiration and respect for the senior Senator from New York, who is fearless and courageous in saying that this was infanticide. That is what this is—the killing of a youngster, which is absolutely unnecessary, when the AMA, the American Medical Association, has come out and said there is no reason for this procedure. What are we talking about when we move down this line and say that anyone can do anything, even where we have a life, a new and innocent life?

And so, Mr. President, I, too, say to my colleague and friend from Pennsylvania, we thank you for having the moral certainty and courage of not giving up and fighting to preserve the opportunity for those lives that have really come into being, to be what they can be and what they should be. When we talk about preserving the sanctity of life, there is no greater fight, no greater cause.

I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I say to Senator SANTORUM, for all you have gone through and all the courage that it has taken for you to do what you have done, I hope that tonight, by staying here a few minutes with you—and there is nobody else on the floor but us—you understand that we are very appreciative of your leadership and we are with you. We are going to vote with you, and we are going to vote with you again, until it finally prevails. I thank the Senator.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, I thank the Senator from New Mexico and the Senator from New York for their overly gracious comments. They have been in this Chamber a lot longer than I and have been fighting many noble causes, including the cause of life. They have served as tremendous models for me in this effort. I thank them for their terrific heartfelt support on this issue and other issues pertaining to life.

MORNING BUSINESS

Mr. SANTORUM. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUTCHINSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

PARTIAL-BIRTH ABORTION BAN ACT OF 1997—VETO

Mr. HUTCHINSON. Mr. President, I rise in support of the ban on the partial-birth abortion procedure and in support of the vote to override the President's veto. It is inexplicable to me why that veto occurred, and I think it is unfortunate and tragic. We have an opportunity tomorrow to right that wrong. I join my distinguished colleagues in praising Senator SANTORUM, the distinguished Senator from Pennsylvania, who has so eloquently put forth the case for banning this procedure and appealing to our consciences as Americans, as human beings, and as civilized people to end the condoning of this procedure in this country.

I think, as I listened to the Senator from Pennsylvania this afternoon, and as I recall the previous debates on this issue, I was moved, as I know millions of Americans were moved, as we listened to not only the logic but the moral persuasiveness of the need to ban this procedure. I think this evening, as I say those laudatory words about my colleague from Pennsylvania, it is appropriate that we say also that there are many in the other Chamber, the House of Representatives, who have fought this battle over and over to ensure that that veto was overridden in the House of Representatives.

I think of my friend from Florida, CHARLES CANADY, who is the chairman of the Constitution Subcommittee in the House of Representatives, who has so eloquently and so forcefully argued for this legislation and carried this crusade across this country.

I think of the distinguished chairman of the House Judiciary Committee, who has come under such unfair and scathing attack in recent days and yet who has been, I think, the most eloquent and passionate voice for the unborn that modern America has seen.

I rise in defense of him and in support of Congressman HYDE this evening and appreciation for all that he has done for the cause of the unborn. On more than one occasion, as I served in the House of Representatives, I saw minds change and hearts change under the persuasiveness of his oratory.

It is my hope that even as we look at this very important vote in the morning, that, yes, there will be those in this body who will look deep within their soul, who evaluate their own conscience, and examine their own hearts, and that we might even yet see those two or three votes necessary to change in order to see this veto overridden.

It is often suggested in this debate that government should stay out of the abortion issue. But if the protection of innocent lives is not government's duty, then I ask, What is government's duty? Thomas Jefferson once wrote, "The care of human life—not its destruction, is the first and only legitimate objective of good government. Legislative efforts to protect the weak and defenseless are right and should be pursued." I can think of none who are weaker, I can think of none in the human family more defenseless, than those who are but inches from enjoying life.

In fact, in March of last year, my home State of Arkansas joined a number of other States in banning such a procedure when the State legislature passed and the government signed our partial-birth abortion ban in the State of Arkansas.

This procedure is a barbaric, uncivilized procedure, shockingly close to infanticide, as has been so frequently observed on the floor of the Senate today. It is so close to infanticide that, in fact, no civilized country, no compassionate people, should allow it. Any woman knows that the first step of partial-birth abortion—breach delivery—is something to avoid, not something to intentionally cause.

During the last debate that we had on this subject, I quoted Jean Wright, associate professor of pediatrics and anesthesia at Emory University. It is a quote that I think deserves being said again during this debate. She was testifying against the argument that fetuses who are candidates for partial-birth abortion do not feel pain during the procedure. She testified that the fetus is sensitive to pain, perhaps even more sensitive—more sensitive—than a full-term infant. She added, and this is the part that is especially striking, and I quote her words as she testified: "This procedure, if it was done on an animal in my institution, would not make it through the institutional review process." And then she said, "The animal would be more protected than this child is."

How tragic that we allow that situation to exist where, in an institution of higher learning in this country, animals have greater protections than do unborn children.

So I am glad this evening very briefly to rise in support of the Senator from Pennsylvania, to rise in support of this override of the President's veto. As has been said, this is not about choice nor compulsion, it is about inhumane disposal of unwanted babies.

This legislation does not prevent a woman from receiving medical care or reproductive care. It does not overturn *Roe* v. *Wade*. It simply ends an unnatural and unhealthy practice that results in the loss of human life. We must help the helpless, we must defend the defenseless, and we must give voice to the voiceless.

I commend the Senator from Pennsylvania and my colleague from Ohio,

who will speak soon, for giving voice to the voiceless, for standing up and defending the defenseless, and for helping the most helpless and most innocent in our society, the unborn.

Mr. President, I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I want to speak for a couple of minutes. I know the Senator from Ohio, the Presiding Officer, will be coming down and speaking.

I want to point out one thing. Several comments have been made on the other side about the life-of-the-mother exception in the bill. I just want to read it. There is some concern that there is no life-of-the-mother exception in the bill. Let me assure everyone in this Chamber and everyone within the sound of my voice that there is a clear life-of-the-mother exception that gives physicians the right to make those critical medical decisions that unfortunately may occur that would necessitate the killing of a baby in a crisis situation that is in the process of being delivered.

If you do not believe me, let me read from a letter that was written during the debate last year by the American Medical Association that endorsed this bill. I will read the pertinent language with respect to the life-of-the-mother exception.

Our support of this legislation is based on three specific principles. First, the bill would allow a legitimate exception where the life of the mother was endangered, thereby preserving the physician's judgment to take any medically necessary steps to save the life of the mother.

This is a group of physicians who in the previous paragraph said:

Although our general policy is to oppose legislation criminalizing medical practice or procedure, the AMA has supported such legislation where the procedure was narrowly defined and not medically indicated.

So while they have reticence, and had reticence, about supporting any kind of a ban on the procedure, one of the things that made them comfortable about supporting this particular piece of legislation was the language having to do with the life-of-the-mother exception. They felt it gave physicians sufficient room to be able to make that call if in fact someone was in a life-threatening situation and a baby would have to be killed in the process of saving the mother's life, if so determined by the doctor. We have provided that.

I think it is very unfortunate that Members on the other side have raised this red herring that has no basis in fact—no basis in the legal language.

I don't want to go any further. I will come back and read the exact language in the bill for anyone who has a question.

It is a very clear life-of-the-mother exception that gives plenty of leeway for the physician to be able to take whatever action is necessary to save the mother. And to perpetrate that hoax on Members of Congress and those who might be listening who might not have the bill in front of them is really, I should add, another lie to the lies that I enumerated earlier, the six lies. Now I have to add a seventh—that there is somehow no life-of-the-mother exception in the bill when the very organization whose physicians are going to be practicing says there is a legitimate exception, thereby preserving the physician's judgment to take any medically necessary steps to save the life of the mother.

I don't know how more clear you can be. I will have more to say.

I will yield the floor so the Senator from Ohio, who is one of the great champions of pro-life in this country, someone who is outspoken not just here on the Senate floor but around the country, and he has lived by example as well as by his speeches. I yield to the Senator from Ohio, Senator DEWINE.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Ohio.

Mr. DEWINE. Mr. President, first, let me congratulate my colleague and friend from Pennsylvania.

Senator DOMENICI said it very, very well: Keep trying and keep trying, and eventually we will succeed, because I believe what we are trying to do is right. The vast majority of the American people agree with us. We will succeed.

I congratulate Senator SANTORUM, my friend from Pennsylvania, who has fought so hard, who has argued so eloquently on this floor.

I would also like to associate myself with the Senator from New York, the Senator from New Mexico, and the Senator from Arkansas, who just in the last few minutes so eloquently argued in favor of our override of this veto tomorrow morning.

Mr. President, I think it is truly regrettable that we still have to debate this after so many years.

We are talking about a procedure that is morally wrong. The facts are really not at issue. No one denies this procedure is designed to kill, to kill a living, partially delivered baby, a baby that is usually 5 to 6 months old, 5 to 6 months in gestation.

No one denies that only a few inches separate this barbaric practice from outright murder. Partial-birth abortion is perhaps the only legal procedure where live birth and death become virtually simultaneous.

The vote we will cast tomorrow morning will be a clear moral decision about life and about death. It is a decision really about who we are as a people, our moral identity as a people. Banning this procedure represents the moral consensus of the American people by an overwhelming margin.

Dr. LeRoy Sprang and Mark Neerhof stated in the Journal of the American Medical Association:

Partial-birth abortion should not be performed because it is needlessly risky, inhumane and ethically unacceptable.

Mr. President, I strongly agree with this characterization, as do the American people. It is no secret that America has been experiencing a moral crisis, and we have reached a crossroads. The questions which I asked on this floor just about a year ago, I guess, about partial-birth abortion really remain unanswered. These questions are more profound than ever. What does our toleration for this immoral practice say for us as a country? What does it say about us as a people? I believe one judges a country by what it is for but also you judge a country by what it is against. We judge a country by what it tolerates. We tolerate too much in this country. We tolerate a lot in this Nation. But at some point we simply have to draw the line. We have to stop hiding behind the phrase, "Oh, I really don't like this but it's someone else's private matter and I don't want to interfere. We will put up with it. It's not my business."

We have to stop hiding behind that. In a country that is based on respect for freedom, this is, of course, a very important principle. But it does have limits, limits that are based on the same respect for human rights that is the very foundation for freedom itself. Why, after all, is the argument based on personal freedom so powerful in our political debates? It is because we all have in our hearts the immortal words of Thomas Jefferson, the words that we hold these truths to be self-evident, that we have the inalienable right to life, liberty and the pursuit of happiness. This is our profound moral conviction.

But what does it say about our moral convictions when we continue to allow in this country this barbaric practice? What does it say about us as a people? Does allowing this practice bespeak a commitment to the sanctity of human life, of a human person? No, if we do not say at some point that our tolerance draws the line on a practice so brutal and so inhumane, we run the severe risk of eroding this moral foundation that really lies at the base of all our other freedoms. A country that allows this barbaric procedure to be inflicted on innocent human lives is a country that cannot be trusted when it proclaims a respect for other freedoms. What freedom will such a country not discard in the name of mere convenience?

For me, the decision is clear. This is where we draw the line. Now is the time that we draw it. We must ban this uncivilized, this barbaric, this immoral procedure, and we must do it tomorrow morning.

Many people agree that this procedure is closer to infanticide than it is

to abortion. One of the reasons banning this procedure has been supported by doctors, including the American Medical Association, the Physicians' Ad Hoc Coalition for Truth, and even by otherwise pro-choice individuals, including even some abortionists, is because it is a procedure that is never a medical necessity. It is never a medical necessity. The evidence is overwhelming. It is done for sheer convenience.

The American College of Obstetricians and Gynecologists, while it does not support this bill, could nevertheless not identify any circumstances in which this procedure would be the only option to save the life or preserve the health of a mother.

Most people in America oppose this procedure. And they oppose it for the simple reason they know what it is. For those who do not or who need to be reminded of what it is, let me again describe it. And I know this is a procedure that has been described on this floor many, many times, but it goes to the heart of this debate.

Partial-birth abortion involves the partial delivery of a baby by its feet. The head is left inside the mother's womb. The head remains in the uterus while the abortionist kills the baby by stabbing scissors into the base of the child's head, suctioning out the baby's brain with a small tube, then completing the delivery of a now dead child. In this barbaric procedure, Mr. President, the abortionist does not even administer an anesthesia to the fetus.

A moment ago, the Senator from Arkansas pointed out that dogs are treated better than this. The dogs that are used in medical research are required to be given pain management therapy under Federal standards. The treatment of these human fetuses that we are talking about would not even meet the bare minimum Federal standards for dogs used in medical research. Knowing that, why then have we not banned this procedure? Why are we still here debating again what should be self-evident, that this practice is a crime against our common humanity?

The answer, I am afraid, is very simple. My friend from Pennsylvania spent a good amount of time in this Chamber outlining the reason. The case supporting this procedure is built on misinformation. It is built on lies, and they are intended to poison the public debate and obscure the truth. That is the fact.

In the beginning of the partial-birth abortion controversy, many people were misled to believe that this procedure was rare. We were told it was rare. Now, today, we know that simply is not true. Almost everyone is aware by now that Ron Fitzsimmons, executive director of the National Coalition of Providers, admitted that he lied. He said, "I lied through my teeth"—when he said partial-birth abortions were performed rarely and only in extreme medical circumstances. He admitted later after the debate that that was a lie.

In the interest of medical accuracy, let me emphasize and be specific about how Mr. Fitzsimmons lied. He lied plainly and, in his own words, he "lied through his teeth." We were misled again when we were told that this procedure was the only late-term abortion procedure that could be used in certain instances to save the life of the mother. Again, that is not true. It is simply not true. This procedure is not medically necessary. It is not medically indicated ever, nor is it the only option available. That is not based on what MIKE DEWINE says or what RICK SANTORUM says. That is based on the American Medical Association.

Mr. President, we were told yet another falsehood—lie. We were told that this procedure was to preserve the health of the mother. We were misled about that as well. This is simply not true. Dr. Martin Haskell, the man who invented this procedure, said that 80 percent of the abortions he performs are elective —80 percent. This is the abortionist. This is the man who invented this procedure. He said 80 percent of the ones he performed are elective.

A survey which asks women who had late-term abortions why they waited found that 71 percent did not know they were pregnant or misjudged the age of the baby. This procedure is being performed for convenience, pure and simple.

We have also been told the procedure is appropriate because the baby is not viable anyway. But even this is certainly not always true. Many times it is not true. Research in a recent article in the New England Journal of Medicine found 56 percent of babies are viable outside their mother's womb at 24 weeks. At 25 weeks, 79 percent of them are viable.

I am sure many of my colleagues have had the same experience that I have when we have gone home to our home States, visited neonatal intensive care units at children's hospitals or other hospitals, and we have seen 22-week-old children, 23-week-old children that have been born prematurely who are fighting for life. Many of them do, in fact, make it. We have seen that with our own eyes. We have all talked with doctors who are frantically trying, working so hard every day to save them, and many can be saved.

Unfortunately, the President of the United States, in vetoing this legislation, as in his veto of the previous legislation, has justified his position precisely on these types of falsehoods. In fact, if you look at his veto message last time, what you find is all these facts that are outlined there, that he says are facts, are simply not true. The President, tragically, is wrong. While it is true that everyone is entitled to his or her own opinion, none of us is entitled to our own facts. And the facts clearly indicate that what the President put down in his veto message is wrong.

The falsehoods spread by defenders of partial-birth abortion are, frankly, offensive. But even more offensive than some of these lies is when the proponents of partial-birth abortion tell the truth. For example, when they say the partial-birth abortion procedure is needed in order to get rid of "defective" infants. The late Dr. James McMahon, who had performed thousands of these partial-birth abortions, said he performed some of these abortions because the baby had a cleft lip. That is right, a cleft lip. Maybe it is time to rewrite our sacred documents to say, "We hold these truths to be self-evident, that most of us are endowed with inalienable rights, the right to life, liberty and the pursuit of happiness, but people with cleft lips or other problems, other "defectives," are to be the victims of a painful and barbaric murder."

No, that is not the moral attitude of the America that I want to believe in or that I do believe in. That is the moral attitude of another civilization, one that arose in this vicious century only to vanish from the face of the planet by the force of American arms and, more important, American values. It is in our power to say no to this throwback to the days of the Nazis, to say no to the selection of the fittest, to say no to infanticide. That is what we are about today on the floor of the Senate. That is what we will be about tomorrow morning when we cast our vote.

I would like to note briefly that a number of State statutes have sought to ban these partial-birth abortions. Some States have had success and others have not. Many of those statutes which have been struck down, however, are very distinguishable from this legislation. I would like to talk about this constitutional aspect of this bill, because the issue has been raised time and time again on the floor of the Senate. So let me turn to an examination of the bill, based on our Constitution, based on Roe v. Wade and Casey and the other Supreme Court decisions.

First, let me say of the cases, of the statutes that have been struck down, the proposed statute that is before us is clearly distinguishable. For example, the first law to ban the partial-birth abortion procedure was enacted in my home State of Ohio. Unfortunately, this law was recently struck down as vague, as overbroad, particularly as it banned more than just partial-birth abortion. But the bill we are voting on today has, frankly, none of these problems.

Partial-birth abortion bans are fully in effect in seven States of the Union.

Several State and district courts have enjoined State statutes attempting to ban partial-birth abortion. However, no appellate court has ruled on the constitutionality of any of these laws.

Unfortunately, in the decisions that I have reviewed, none squarely confront the constitutional issue that this Federal bill presents; namely, the constitutionality of forbidding the killing of a partially born child. Because that is what this legislation is truly about, what the issue is, is the constitutionality of forbidding the killing of a partially born child.

Roe v. Wade explicitly avoided deciding that issue, so it cannot be cited and should not be cited as an argument against this piece of legislation. Roe v. Wade explicitly avoided deciding that issue, which was actually part of the Texas law in question in that case, a law that prohibited "killing a child in the process of delivery." In fact, Texas case law is consistent with both Louisiana and California law. An early California court aptly said:

It should equally be held that a viable child in the process of being born is a human being within the meaning of the homicide statutes, whether or not the process has been fully completed.

While many of the State court decisions have relied on Planned Parenthood v. Casey, that case does not reach the question of the constitutionality of forbidding the killing of a partially delivered baby either. However, under the Casey analysis, an abortion restriction is unconstitutional only, only if it creates an "undue burden," on the legal right to abortion. Banning a single dangerous procedure such as we are doing in this case, when there are other alternatives available—which is true—should not constitute a burden under this Casey analysis.

Doctors, those who are for, as well as those, some of whom are against this legislation—agree that partial-birth abortion is never medically necessary to protect a mother's health or future fertility, and is never the only option. Over 30 legal scholars who have looked at this question agree that the United States Supreme Court is unlikely to interpret a postviability health exception to require the Government to allow a procedure that gives zero weight to the life of a partially born child and is itself a dangerous procedure.

The bottom line is that there is no substantive difference between a child in the process of being born and that same child if she is born. No difference, really, between a child that is in the process of being born and a child that is born. A current illustration, I think, is very helpful. This is a true story, one that occurred in our minority leader's home State, South Dakota.

On January 5 of this year, Sarah Bartels was pregnant with twins. She was 23 weeks into her pregnancy. Doctors were unable to delay the birth of one of the twins, Sandra, who was born at 23 weeks old. Sandra weighed 1 pound, 2 ounces—23 weeks.

Mr. President, 88 days later Sandra's sister Stephanie was born. Both children are alive and well today. Yet Stephanie was not a "legal person," and could have been the victim of a partial-birth abortion any time after that 23-week period.

Stephanie's life had zero worth until she was completely born, though Sandra was alive and well outside the same womb that held her sister.

Mr. President, the delivery of 80 percent of a child—the child is almost all the way out—a living baby certainly should have some value, some rights, some respect under our law. There is no moral justification for killing a live, partially delivered baby using a procedure that is neither medically necessary nor safer than childbirth. I believe we must make it the national policy to prohibit the partial-birth abortion procedure.

My friend, HENRY HYDE, who you quoted and cited a few moments ago, Mr. President, is one of the most eloquent—the most eloquent really—defenders of human rights in this country today, one of the most eloquent defenders of human rights, frankly, who has ever been in this country. HENRY HYDE likes to say in defending these powerless humans, we are "loving those who can't love us back." I think he is absolutely right.

I will add the phrase, "those who can't love back" includes not just fetuses in the womb, but also the future generations who will live in this country and the moral climate we are choosing to build for them.

The vote we cast tomorrow morning will help determine, Mr. President, that moral climate. Banning partial-birth abortion is the just, it is the right thing to do, and we should do it now.

Mr. President, I thank the Chair and yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, first, again, I thank the Senator from Ohio for his excellent comments and particularly his latter focus on the legal issues that were not brought up earlier. I had not had the opportunity, and neither did anybody else, to focus attention on why this particular legislation is, in fact, constitutional and that should not be a reason to not vote for this legislation. An excellent job done.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, September 16, 1998, the federal debt stood at $5,510,133,012,971.17 (Five trillion, five hundred ten billion, one hundred thirty-three million, twelve thousand, nine hundred seventy-one dollars and seventeen cents).

One year ago, September 16, 1997, the federal debt stood at $5,391,866,000,000 (Five trillion, three hundred ninety-one billion, eight hundred sixty-six million).

Five years ago, September 16, 1993, the federal debt stood at $4,388,882,000,000 (Four trillion, three hundred eighty-eight billion, eight hundred eighty-two million).

Ten years ago, September 16, 1988, the federal debt stood at $2,597,622,000,000 (Two trillion, five hundred ninety-seven billion, six hundred twenty-two million).

Fifteen years ago, September 16, 1983, the federal debt stood at $1,354,702,000,000 (One trillion, three hundred fifty-four billion, seven hundred two million) which reflects a debt increase of more than $4 trillion—$4,155,431,012,971.17 (Four trillion, one hundred fifty-five billion, four hundred thirty-one million, twelve thousand, nine hundred seventy-one dollars and seventeen cents) during the past 15 years.

SATELLITE COMPULSORY LICENSE REFORM PROCESS AND S. 1720 CHAIRMAN'S MARK

Mr. HATCH. Mr. President, I am glad to stand with the distinguished Majority Leader and the distinguished chairman of the Commerce Committee to explain how we plan to proceed with respect to reform of the copyright compulsory license governing the retransmission of broadcast television signals by satellite carriers. Let me thank them for their interest in these important issues and their cooperation in this process. The Majority Leader has been particularly helpful in facilitating a process allowing for a joint reform package from our two committees.

Mr. President, the Judiciary Committee has been working on these issues for more than 2 years. We have always recognized that some of the reforms we need to undertake in relation to the compulsory copyright license would require reforms in the communications law which has traditionally been dealt with in the Commerce Committee. I am glad that we have been able to work out a process whereby we can move a bill to the floor that will be the joint work product, and thus using the joint expertise, of both the Judiciary and Commerce Committees.

We will proceed in the Judiciary Committee by working on a bill on the subject that has already been referred to the Judiciary Committee, S. 1720, which Senator LEAHY and I introduced earlier in this Congress. We will mark up a Chairman's mark substitute amendment of that bill which will cover the copyright amendments, including the granting and extension of

the local and distant signal licenses, respectively, as well as the copyright rates for each of those licenses. Other important reforms include eliminating the current waiting period for cable subscribers before getting satellite service, and postponing the date of the enforcement of the so-called white area rules for a brief period. As of today, a large number of satellite subscribers who have been found to be ineligible for distant network signals will be turned off in early October. Our bill will delay any such terminations to allow subscribers and satellite carriers to adopt other service packages, including local service packages where available, to work with local affiliates to work out a coverage compromise, and to allow the FCC to review the rules governing the eligibility for the reception of distant network signals. The text of this Chairman's mark will be printed in the RECORD at the conclusion of my remarks and is supported and cosponsored by the chairman of the Commerce Committee, Senator MCCAIN, as well as Senators LEAHY, DEWINE, and KOHL.

While the Judiciary Committee works on these copyright reforms, our colleagues in the Commerce Committee will be working on related communications amendments regarding such important areas such as the must-carry and retransmission consent requirements for satellite carriers upon which the copyright licenses will be conditioned, and the FCC's distant signal eligibility process. Chairman MCCAIN will be introducing this legislation today as well.

It is our joint intention to combine our respective work product as two titles of the same bill, S. 1720, in a way that will clearly delineate the work product of each committee, but combine them into the seamless whole necessary to make the licenses work for consumers and the affected industries.

In conclusion, let me again thank the Majority Leader for his interest in and leadership with respect to these issues, and I thank the chairman of the Commerce Committee for his collegiality and cooperation in this process. I look forward to working with them and with our other colleagues on these important issues.

I ask unanimous consent that the text of the Chairman's mark substitute for S. 1720 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[The material was not available for printing. It will appear in a future edition of the RECORD.]

BILL TO PREVENT CUTOFFS OF SATELLITE TV SERVICE

Mr. LEAHY. Mr. President, I have heard from scores of Vermonters lately who are steaming mad after being told by their home satellite signal providers that they are about to lose some of their network satellite channels. They have every right to be upset. It is within Congress's ability to un-muddle this mess, and the public has every reason to expect Congress to get its act together to do that, and to do that promptly.

While the hills and mountains of Vermont are a natural wonder, they can also be barriers to reception of clear TV signals over-the-air with rooftop antennas. At my home in Middlesex, Vermont, we can only get one channel clearly, and lots of ghosts on the other channel we receive. We get so many ghosts on our family set that it looks like Mark McGwire and Sammy Sosa are hitting four homeruns at a time.

That is why Vermonters have chosen satellite reception: They cannot get a clear picture without it.

I am gratified tonight that we are finally in a position to announce an understanding that I hope will keep satellite TV viewers from having to lose station signals this year. I am joining with both the Chairman of the Judiciary Committee and the Chairman of the Commerce Committee on two separate bills designed fix these problems. I am certain that most Senators will be pleased with this breakthrough, and I hope we can pass this bill without objection in the Senate.

Under a court order, thousands of viewers—many of them living in my home state of Vermont—will be cut off from receiving satellite TV stations that they are paying to receive. We have 65,000 home satellite dishes in Vermont. the court order directly affects only those subscribers who signed up for service after March 11, 1997, but most subscribers are being warned nonetheless by their signal providers that they will soon lose several network channels they now receive.

This huge policy glitch is intruding right now into hundreds of thousands of homes. It is a royal mess, and Congress and the FCC need to fix it.

I introduced a bill in March of this year with Chairman HATCH so that we could try to resolve this issue before it became a major problem. We have tried in the many months since then to push Congress toward a solution. Many viewers have lost signals already. We are trying to get these bills passed in the next couple of weeks to restore service and to keep other households for losing their satellite TV signals—not just in Vermont but throughout the nation.

I am pleased that Chairman HATCH and I have worked out arrangements with the Chairman of the Commerce Committee and other Senators active on this issue, including Senators DEWINE and KOHL, that significantly raise the prospects that Congress can soon pass a bill to prevent the cutoff of thousands of viewers this month and in October. We hope and we believe that all Senators can support this approach.

This legislation would keep signals available to Vermonters and subscribers in other states until the FCC has a chance to address these issues by the end of next February.

Our legislation will direct the FCC to address this problem for the future, and our proposal ultimately will mean—as technology advances—that Vermonters will be able to receive satellite TV for all Vermont full-power TV stations. Viewers in all states would be similarly protected. This effort eventually will promote head-to-head competition between cable and satellite TV providers.

The goal is to provide satellite home viewers in Vermont and across the nation with more choices and more channel selections, and at lower rates. The evidence is clear that in areas of the country where there is full competition between cable providers, rates to customers are considerably lower. The same will be true when there is greater effective competition between cable providers and satellite signal providers.

Over time, this effort will permit satellite TV providers to offer a full selection of local TV channels to viewers—even to those living in or near Burlington, Vermont, where local signals are now blocked.

Under current law, those families must get their local TV signals over an antenna which often does not provide a clear picture. These bills eventually will remove that legal limitation that prohibits satellite carriers from offering local TV signals to viewers.

Over time, satellite carriers will have to follow the rules that cable providers have to follow which will mean that they must carry all local Vermont TV stations. In addition, Vermont stations will be available over satellite to many areas of Vermont that today are unserved by satellite or by cable.

Vermonters now receive network satellite signals with programming from stations in other states. In other words, they may get a CBS station from another state but not WCAX, the Burlington CBS affiliate.

By allowing satellite providers to offer a wider variety of programming, including local stations, the satellite industry would be able to compete with cable, and the cable industry will be competing with satellite carriers. Cable will continue to be a highly effective competitor with its ability to offer extremely high-speed Internet connections to homes and businesses.

The second major improvement offered through our legislation is that satellite carriers that offer local Vermont channels in their mix of programming will be able to reach Vermonters throughout our state. The system will be based on regions called Designated Market Areas, or DMAs.

Vermont has one large DMA covering most of the state—the Burlington-Plattsburg DMA, and two smaller ones in southeastern Vermont—the Albany-Schenectady-Troy DMA includes Bennington County—and in southwestern Vermont, where the Boston DMA includes Windham County.

Using current technology, signals would be provided by spot-beam satellites using some 150 regional uplink sites throughout the nation to beam local signals up to two satellites. Those satellites would use 60 or so spotbeams to send those local signals, received from the regional uplinks, back to satellite dish owners. High-definition TV would be offered under this system at a later date. This system is likely to take two to three years to be put into full operation. In the meantime, another company called EchoStar may provide some local-into-local service in some parts of the country.

Under the bill that Senator HATCH and I introduced in March, this spotbeam technology would mean that home owners with satellite dishes in downtown Burlington, and in every county in Vermont except Windham and Bennington, would receive all the full-power TV stations in the Burlington-Plattsburg DMA, including PBS stations. Bennington residents would receive the stations in the Schnectady-Albany-Troy DMA, and Windham County residents would receive Boston signals, since they are in the Boston DMA. Over time these counties could be blended into the Burlington-Plattsburg DMA.

Since technology advances so quickly, other systems could be developed before this bill is fully implemented that would provide similar service but using different technology. And existing systems would be accommodated under our legislation, but those systems would follow rules similar to current rules until conversion to this new technology takes place.

It is time for this Congress to step up to the plate and solve this policy nightmare that is now at the door of countless homes across the nation. Our constituents rightly will not take "not now" as an acceptable answer.

I commend Chairman HATCH and Chairman MCCAIN for the leadership they have shown in solving this problem, and I look forward to continue working closely with them and with other Senators as we move this solution toward, and eventually across, the goal line.

ADMINISTRATION'S UPDATED ENCRYPTION POLICY

Mr. LEAHY. Mr. President, when the Administration first announced the encryption policy that has been in effect for the past two years, I warned on October 1, 1996, that:

> The general outline of the Administration's plan smacks of the government trying to control the marketplace for high-tech products. Only those companies that agree to turn over their business plans to the government and show that they are developing key recovery systems, will be rewarded with permission to sell abroad products with DES encryption, which is the global encryption standard.

The Administration announced yesterday that it is finally fixing this aspect of its encryption policy. New Administration guidelines will permit the export of 56-bit DES encryption without a license, after a one time technical review, to all users outside the seven terrorist countries. No longer will the Administration require businesses to turn over business plans and make promises to build key recoverable products for the freedom to export 56-bit DES.

In 1996, I also raised serious questions about the Administration's proposal to pull the plug on 56-bit DES exports in two years. I warned at the time that this "sunset" provision "does not promote our high-tech industries overseas." I specifically asked,

> Does this mean that U.S. companies selling sophisticated computer systems with DES encryption overseas must warn their customers that the supply may end in two years? Customers both here and abroad want stable suppliers, not those jerked around by their government.

I am pleased that the Administration has also changed this aspect of its policy and adopted an export policy with no "sunset." Instead, the Administration will conduct a review of its policy in one year to determine how well it is working.

Indeed, while 56-bit encryption may still serve as the global standard, this will not be the situation for much longer. 128-bit encryption is now the preferred encryption strength.

In fact, to access online account information from the Thrift Savings Plan for Federal Employees, Members and congressional staff must use 128-bit encryption. If you use weaker encryption, a screen pops up to say "you cannot have access to your account information because your Web browser does not have Secure Socket Layer (SSL) and 128-bit encryption (the strong U.S./Canada-only version)."

Likewise, the Department of Education has set up a Web site that allows prospective students to apply for student financial aid online. Significantly, the Education Department states that "[t]o achieve maximum protection we recommend you use 128-bit encryption."

These are just a couple examples of government agencies or associated organizations directing or urging Americans to use 128-bit encryption. We should assume that people in other countries are getting the same directions and recommendations. Unfortunately, while American companies can fill the demand for this strong encryption here, they will still not be permitted to sell this strength encryption abroad for use by people in other countries.

Nevertheless, the Administration's new encryption policy announced today moves in the right direction to bolster the competitive edge of our Nation's high-tech companies, allow American companies to protect their confidential and trade secret information and intellectual property in communications with subsidiaries abroad, and promote global electronic commerce. These are objectives I have sought to achieve in encryption legislation that I have introduced and cosponsored with bipartisan support in this and the last Congress.

I remain concerned, however, that privacy safeguards and standards for law enforcement access to decryption assistance are ignored in the Administration's new policy. These are critical issues that continue to require our attention.

REPORT CONCERNING THE NATIONAL EMERGENCY WITH RESPECT TO IRAN—MESSAGE FROM THE PRESIDENT—PM 158

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

I hereby report to the Congress on developments concerning the national emergency with respect to Iran that was declared in Executive Order 12957 of March 15, 1995, and matters relating to the measures in that order and in Executive Order 12959 of May 6, 1995, and in Executive Order 13059 of August 19, 1997. This report is submitted pursuant to section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c) (IEEPA), section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 505(c) of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa-9(c). This report discusses only matters concerning the national emergency with respect to Iran that was declared in Executive Order 12957 and does not deal with those relating to the emergency declared on November 14, 1979, in connection with the hostage crisis.

1. On March 15, 1995, I issued Executive Order 12957 (60 Fed. Reg. 14615, March 17, 1995) to declare a national emergency with respect to Iran pursuant to IEEPA, and to prohibit the financing, management, or supervision by United States persons of the development of Iranian petroleum resources. This action was in response to actions and policies of the Government of Iran,

including support for international terrorism, efforts to undermine the Middle East peace process, and the acquisition of weapons of mass destruction and the means to deliver them. A copy of the Order was provided to the Speaker of the House and the President of the Senate by letter dated March 15, 1995.

Following the imposition of these restrictions with regard to the development of Iranian petroleum resources, Iran continued to engage in activities that represent a threat to the peace and security of all nations, including Iran's continuing support for international terrorism, its support for acts that undermine the Middle East peace process, and its intensified efforts to acquire weapons of mass destruction. On May 6, 1995, I issued Executive Order 12959 (60 Fed. Reg. 24757, May 9, 1995) to further respond to the Iranian threat to the national security, foreign policy, and economy of the United States. The terms of that order and an earlier order imposing an import ban on Iranian-origin goods and services (Executive Order 12613 of October 29, 1987) were consolidated and clarified in Executive Order 13059 of August 19. 1997.

At the time of signing Executive Order 12959, I directed the Secretary of the Treasury to authorize through specific licensing certain transactions, including transactions by United States persons related to the Iran-United States Claims Tribunal in The Hague, established pursuant to the Algiers Accords, and related to other international obligations and U.S. Government functions, and transactions related to the export of agricultural commodities pursuant to preexisting contracts consistent with section 5712(c) of title 7, United States Code. I also directed the Secretary of the Treasury, in consultation with the Secretary of State, to consider authorizing United States persons through specific licensing to participate in market-based swaps of crude oil from the Caspian Sea area for Iranian crude oil in support of energy projects in Azerbaijan, Kazakhstan, and Turkmenistan.

Executive Order 12959 revoked sections 1 and 2 of Executive Order 12613 of October 29, 1987, and sections 1 and 2 of Executive Order 12957 of March 15, 1995, to the extent they are inconsistent with it. A copy of Executive Order 12959 was transmitted to the Congressional leadership by letter dated May 6, 1995.

2. On August 19, 1997, I issued Executive Order 13059 in order to clarify the steps taken in Executive Order 12957 and Executive Order 12959, to confirm that the embargo on Iran prohibits all trade and investment activities by United States persons, wherever located, and to consolidate in one order the various prohibitions previously imposed to deal with the national emergency declared on March 15, 1995. A copy of the Order was transmitted to the Speaker of the House and the President of the Senate by letter dated August 19, 1997.

The Order prohibits (1) the importation into the United States of any goods or services of Iranian origin or owned or controlled by the Government of Iran except information or informational material; (2) the exportation, reexportation, sale, or supply from the United States or by a United States person, wherever located, of goods, technology, or services to Iran or the government of Iran, including knowing transfers to a third country for direct or indirect supply, transshipment, or reexportation to Iran or the Government of Iran, or specifically for use in the production, commingling with, or incorporation into goods, technology, or services to be supplied, transshipped, or reexported exclusively or predomininatly to Iran or the Government of Iran; (3) knowing reexportation from a third country to Iran or the Government of Iran of certain controlled U.S.-origin goods, technology, or services by a person other than a United States person; (4) the purchase, sale, transport, swap, brokerage, approval, financing, facilitation, guarantee, or other transactions or dealings by United States persons, wherever located, related to goods, technology, or services for exportation, reexportation, sale or supply, directly or indirectly, to Iran or the Government of Iran, or to goods or services of Iranian origin or owned or controlled by the Government of Iran; (5) new investment by United States persons in Iran or in property or entities owned or controlled by the Government of Iran; (6) approval, financing, facilitation, or guarantee by a United States person of any transaction by a foreign person that a United States person would be prohibited from performing under the terms of the Order; and (7) any transaction that evades, avoids, or attempts to violate a prohibition under the Order.

Executive Order 13059 became effective at 12:01 a.m., eastern daylight time on August 20, 1997. Because the Order consolidated and clarified the provisions of prior orders, Executive Order 12613 and paragraph (a), (b), (c), (d) and (f) of section 1 of Executive Order 12959 were revoked by Executive Order 13059. The revocation of corresponding provisions in the prior Executive orders did not affect the applicability of those provisions, or of regulations, licenses or other administrative actions taken pursuant to those provisions, with respect to any transaction or violation occurring before the effective date of Executive Order 13059. Specific licenses issued pursuant to prior Executive orders continue in effect, unless revoked or amended by the Secretary of the Treasury. General licenses, regulations, orders, and directives issued pursuant to prior orders continue in effect, except to the extent inconsistent with Executive Order 13059 or otherwise revoked or modified by the Secretary of the Treasury.

The declaration of national emergency made by Executive Order 12957, and renewed each year since, remains in effect and is not affected by the Order.

3. On March 4, 1998, I renewed for another year the national emergency with respect to Iran pursuant to IEEPA. This renewal extended the authority for the current comprehensive trade embargo against Iran in effect since May 1995. Under these sanctions, virtually all trade with Iran is prohibited except for trade in information and informational materials and certain other limited exceptions.

4. There have been no amendments to the Iranian Transactions Regulations, 31 CFR Part 560 (the "ITR"), since my report of March 16, 1998.

5. During the current 6-month period, the Department of the Treasury's Office of Foreign Assets Control (OFAC) made numerous decisions with respect to applications for licenses to engage in transactions under the ITR, and issued 12 licenses.

The majority of denials were in response to requests to authorize commercial exports to Iran—particularly of machinery and equipment for various industries—and the importation of Iranian-origin goods. The licenses that were issued authorized certain financial transactions and transactions relating to air safety policy. Pursuant to sections 3 and 4 of Executive Order 12959, Executive Order 13059, and consistent with statutory restrictions concerning certain goods and technology, including those involved in air safety cases, the Department of the Treasury continues to consult with the Departments of State and Commerce on these matters.

Since the issuance of Executive Order 13059, more than 1,500 transactions involving Iran initially have been "rejected" by U.S. financial institutions under IEEPA and the ITR. United States banks declined to process these transactions in the absence of OFAC authorization. Twenty percent of the 1,500 transactions scrutinized by OFAC resulted in investigations by OFAC to assure compliance with IEEPA and ITR by United States persons.

Such investigations resulted in 15 referrals for civil penalty action, issuance of 5 warning letters, and an additional 52 cases still under compliance or legal review prior to final agency action.

Since my last report, OFAC has collected 20 civil monetary penalties totaling more than $110,000 for violations of IEEPA and the ITR related to the import or export to Iran of goods and

services. Five U.S. financial institutions, twelve companies, and three individuals paid penalties for these prohibited transactions. Civil penalty action is pending against another 45 United States persons for violations of the ITR.

6. On January 22, 1997, an Iranian national resident in Oregon and a U.S. citizen were indicted on charges related to the attempted exportation to Iran of spare parts for gas turbines and precursor agents utilized in the production of nerve gas. The 5-week trial of the American citizen defendant, which began in early February 1998, resulted in his conviction on all counts. That defendant is awaiting sentencing. The other defendant pleaded guilty to one count of criminal conspiracy and was sentenced to 21 months in prison.

On March 24, 1998, a Federal grand jury in Newark, New Jersey, returned an indictment against a U.S. national and an Iranian-born resident of Singapore for violation of IEEPA and the ITR relating to exportation of munitions, helicopters, and weapons systems components to Iran. Among the merchandise the defendants conspired to export were parts for Phoenix air-to-air missiles used on F–14A fighter jets in Iran. Trial is scheduled to begin on October 6, 1998.

The U.S. Customs Service has continued to effect numerous seizures to Iranian-origin merchandise, primarily carpets, for violation of the import prohibitions of the ITR. Various enforcement actions carried over from previous reporting periods are continuing and new reports of violations are being aggressively pursued.

7. The expenses incurred by the Federal Government in the 6-month period from March 15 through September 14, 1998, that are directly attributable to the exercise of powers and authorities conferred by the declaration of a national emergency with respect to Iran are reported to be approximately $1.7 million, most of which represent wage and salary costs for Federal personnel. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the U.S. Customs Service, the Office of the Under Secretary for Enforcement, and the Office of the General Counsel); the Department of State (particularly the Bureau of Economic and Business Affairs, the Bureau of Near Eastern Affairs, the Bureau of Intelligence and Research, and the Office of the Legal Adviser); and the Department of Commerce (the Bureau of Export Administration and the General Counsel's Office).

8. The situation reviewed above continues to present an extraordinary and unusual threat to the national security, foreign policy, and economy of the United States. The declaration of the national emergency with respect to Iran contained in Executive Order 12957 and the comprehensive economic sanctions imposed by Executive Order 12959 underscore the Government's opposition to the actions and policies of the Government of Iran, particularly its support of international terrorism and its efforts to acquire weapons of mass destruction and the means to deliver them. The Iranian Transactions Regulations issued pursuant to Executive Orders 12957, 12959, and 13059 continue to advance import objectives in promoting the nonproliferation and antiterrorism policies of the United States. I shall exercise the powers at my disposal to deal with these problems and will report periodically to the Congress on significant developments.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *September 16, 1998.*

MESSAGES FROM THE HOUSE

At 12:06 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 4550. An act to provide for programs to facilitate a significant reduction in the incidence and prevalence of substance abuse through reducing the demand for illegal drugs and the inappropriate use of legal drugs.

H.J. Res. 128. Joint resolution making continuing appropriations for the fiscal year 1999, and for other purposes.

The message also announced that the House insists upon its amendment to the bill (S. 1260) to amend the Securities Exchange Act of 1934 to limit the conduct of securities class actions under the State law, and for other purposes, disagreed to by the Senate, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. BLILEY, Mr. OXLEY, Mr. TAUZIN, Mr. COX of California, Mr. WHITE, Mr. DINGELL, Mr. STUPAK, and Ms. ESHOO as the managers of the conference on the part of the House.

ENROLLED BILL SIGNED

The message further announced that the Speaker has signed the following enrolled bill:

S. 2112. An act to make the Occupational Safety and Health Act of 1970 applicable to the United States Postal Service in the same manner as any other employer.

The enrolled bill was signed subsequently by the President pro tempore (Mr. THURMOND).

MEASURES REFERRED

The following bill was read the first and second time by unanimous consent and referred as indicated:

H.R. 4550. An act to provide for programs to facilitate a significant reduction in the incidence and prevalence of substance abuse through reducing the demand for illegal drugs and the inappropriate use of legal drugs; to the Committee on the Judiciary.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on September 17, 1998 he had presented to the President of the United States, the following enrolled bill.

S.2112. An act to make the Occupational Safety and Health Act of 1970 applicable to the United States Postal Service in the same manner as any other employer.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2107. A bill to enhance electronic commerce by promoting the reliability and integrity of commercial transactions through establishing authentication standards for electronic communications, and for other purposes (Rept. No. 105–335).

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

H.R. 3303. A bill to authorize appropriations for the Department of Justice for fiscal years 1999, 2000, and 2001; to authorize appropriations for fiscal years 1999 and 2000 to carry out certain programs administered by the Department of Justice; to amend title 28 of the United States Code with respect to the use of funds available to the Department of Justice, and for other purposes.

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 3494. A bill to amend title 18, United States Code, with respect to violent sex crimes against children, and for other purposes.

By Mr. HATCH, from the Committee on the Judiciary, without amendment:

S. Res. 256. A resolution to refer S. 2274 entitled "A bill for the relief of Richard M. Barlow of Santa Fe, New Mexico" to the chief judge of the United States Court of Federal Claims for a report thereon.

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1637. A bill to expedite State review of criminal records of applicants for bail enforcement officer employment, and for other purposes.

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute and an amendment to the title:

S. 1727. A bill authorize the comprehensive independent study of the effects on trademark and intellectual property rights holders of adding new a generic top-level domains and related dispute resolution procedures.

S. 2392. A bill to encourage the disclosure and exchange of information about computer processing problems and related matters in connection with the transition to the Year 2000.

EXECUTIVE REPORTS OF COMMITTEE

The following executive reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

William B. Traxler, Jr., of South Carolina, to be United States Circuit Judge for the Fourth Circuit.

Alvin K. Hellerstein, of New York, to be United States District Judge for the Southern District of New York.

Richard M. Berman, of New York, to be United States District Judge for the Southern District of New York.

Donovan W. Frank, of Minnesota, to be United States District Judge for the District of Minnesota.

Colleen McMahon, of New York, to be United States District Judge for the Southern District of New York.

William H. Pauley III, of New York, to be United States District Judge for the Southern District of New York.

Thomas J. Whelan, of California, to be United States District Judge for the Southern District of California.

H. Dean Buttram, Jr., of Alabama, to be United States District Judge for the Northern District of Alabama.

Inge Prytz Johnson, of Alabama, to be United States District Judge for the Northern District of Alabama.

Robert Bruce Green, of Oklahoma, to be United States Attorney for the Eastern District of Oklahoma for the term of four years.

Scott Richard Lassar, of Illinois, to be United States Attorney for the Northern District of Illinois for the term of four years.

James A. Tassone, of Florida, to be United States Marshal for the Southern District of Florida for the term of four years.

(The above nominations were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. WELLSTONE:

S. 2489. A bill to amend the Child Care and Development Block Grant Act of 1990 and the Higher Education Act of 1965 to establish and improve programs to increase the availability of quality child care, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. FAIRCLOTH:

S. 2490. A bill to prohibit postsecondary educational institutions from requiring the purchase of goods and services from on-campus businesses, intentionally withholding course information from off-campus businesses, or preventing students from obtaining course information or materials from off-campus businesses; to the Committee on Labor and Human Resources.

By Mr. HATCH (for himself, Mr. LEAHY, and Mr. DEWINE):

S. 2491. A bill to amend title 18, United States Code, to protect children from sexual abuse and exploitation, and for other purposes; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself and Mr. GRAHAM):

S. 2492. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for the long-term care insurance costs of all individuals who are not eligible to participate in employer-subsidized long-term care health plans; to the Committee on Finance.

By Mr. HARKIN:

S. 2493. A bill to amend the Internal Revenue Code of 1986 to allow a tax credit for the nutrient management costs of animal feeding operations; to the Committee on Finance.

By Mr. MCCAIN (for himself, Mr. LEAHY, Mr. HATCH, Mr. DEWINE, and Mr. KOHL):

S. 2494. A bill to amend the Communications Act of 1934 (47 U.S.C. 151 et seq.) to enhance the ability of direct broadcast satellite and other multichannel video providers to compete effectively with cable television systems, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 2495. A bill to establish the Kate Mullany National Historic Site in the State of New York, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SPECTER:

S. 2496. A bill to designate the Department of Veterans Affairs medical center in Aspinwall, Pennsylvania, as the "H. John Heinz III Department of Veterans Affairs Medical Center"; to the Committee on Veterans Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. TORRICELLI (for himself, Mr. D'AMATO, Mr. MURKOWSKI, Mr. CRAIG, Mr. AKAKA, Mr. LAUTENBERG, Mr. GRAHAM, Mr. DASCHLE, Ms. LANDRIEU, Mr. LIEBERMAN, Mr. HATCH, Mr. DOMENICI, Mr. STEVENS, Mr. BENNETT, and Mr. HARKIN):

S. Res. 279. A resolution expressing the sense of the Senate supporting the right of the United States citizens in Puerto Rico to express their desires regarding their future political status; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WELLSTONE:

S. 2489. A bill to amend the Child Care and Development Block Grant Act of 1990 and the Higher Education Act of 1965 to establish and improve programs to increase the availability of quality child care, and for other purposes; to the Committee on Labor and Human Resources.

CHILD DEVELOPMENT ACT

Mr. WELLSTONE. Mr. President, right now in our country there are about 10 million children—of course, when I talk about children, I am talking about their parents as well—who are eligible for good developmental child care opportunities. As it turns out, we provide assistance to 1.4 million out of this 10 million. In other words, fully 86 percent of children who are eligible to receive some assistance so that they will get better child care in those critical early years receive no assistance at all.

I introduce today this piece of legislation, which I have called the Child Development Act. I have been working on it for the last year and a half. Altogether, over the next 5 years, it calls for $62 billion, about $12 billion—less than 1 percent of the budget—to be invested in the health, skills, intellect and character of our children.

About $37.5 billion just increases funding for the Child Care and Development Block Grant Program (CCDBG), which has been a proven success in providing more money so that we can expand child care in our States and provide help to many working families that need this help.

In addition, the bill provides funding for improving afterschool programs. We have funds that are set aside to improve the quality of child care. Children Defense Fund studies have shown that six out of seven child care facilities in this country provide only poor-to-mediocre service, and one out of eight centers actually put children at risk.

There is additional funding for professional training, for new construction, and I say to my colleagues, there is also funding for loan forgiveness, which is the effort that I have been working on with my colleague, Senator DEWINE from Ohio, so that those men and women who do their undergraduate work and receive training in early childhood development, where the wages are so low, at least will receive loan forgiveness which will help them. Finally, there is some $13 billion in tax credits for low- and middle-income working parents to help them afford child care.

Research has shown that much of what happens in life depends upon the first three years of development. The brain is so profoundly influenced during this time that the brain of a three-year-old has twice as many synapses (connections between brain cells) as that of her adult parents. The process of brain development is actually one of "pruning" out the synapses that one does not need (or more accurately, does not use) from those that become the brains standard "wiring." This is why the first three years of development are so important—this is the time that the brain must develop the wiring that is going to be used for the rest of one's life. According to a report on brain development published by the Families and Work Institute, "Early care and nurture have a decisive, long lasting impact on how people develop, their ability to learn, and their capacity to control their own emotions." If children do not receive proper care before the age of three, they never receive the chance to develop into fully functioning adults.

We are not allowing our children a chance in life when we do not provide them with proper care in their early years. If America is to achieve its goal of equal opportunity for our children, we need to start with proper care in

their early years. It is a painful statistic then that our youngest citizens are also some of the poorest Americans. One out of every four of our country's 12 million children under the age of three live in poverty. It becomes very difficult to break out of the cycle of poverty if poor children are not allowed to develop into fully functioning adults.

Yet many parents in America do not have the option of providing adequate care for their children. For parents who can barely afford rent it is nearly impossible to take advantage of the Family Medical Leave Act, and sacrifice 12 weeks of pay in order to directly supervise a child. Many mothers need to return to work shortly after giving birth and find that the only options open to them are to place their children in care that is substandard, even potentially dangerous—but affordable. According to the Children's Defense Fund, six out of seven child care centers provide only poor to mediocre care, and one in eight centers provide care that could jeopardize children's safety and development. The same study said that one in three home-based care situations could be harmful to a child's development. How can we abide by these statistics?

This is a serious problem, and frighteningly widespread. The eligibility levels set for receiving child care aid through the federal Child Care and Development Block Grant (CCDBG) is 85 percent of a state's median income. Nationally, this comes out to about $35,000 for a family of three in 1998. However, according to the Children's defense fund, fully half of all families with young children earn less than $35,000 per year. Half! A family that has two parents working full time at minimum wage earns only $21,400 per year. This is not nearly enough to even dream of adequate child care.

Child care costs in the United States for one child in full day care range from $4,000 to $10,000 a year. It is not surprising that, on average, families with incomes under $15,000 a year spend 23 percent of their annual incomes on child care. And in West Virginia, if a family of three makes more than that $15,000, they no longer qualify for child care aid! In fact, thirty-two states do not allow a family of three which earns $25,000 a year (approximately 185 percent of poverty) to qualify for help. Only four states in our nation set eligibility cut offs for receiving child care assistance at 85 percent of median family income, the maximum allowed by federal law. There is obviously not enough funding to support the huge need for child care assistance in our nation, and that is why I am proposing the Child Care Development Act.

There is widespread support for expanded investments to improve the affordability and quality of child care. A recent survey of 550 police chiefs found that nine out of ten police chiefs surveyed agreed that "America could sharply reduce crime if government invested more in programs to help children and youth get a good start" such as Head Start and child care. Mayors across the country identified child care, more than any other issue, as one of the most pressing issues facing children and families in their communities in 1996 survey. A recent poll found that a bipartisan majority of those polled support increased investments in helping families pay for child care—specifically, 74% of those polled favor a bill to help low-income and middle-class families pay for child care, including 79% of Democrats, 69% of Republicans, and 76% of Independents.

It is clear that many like to talk about supporting our children, and many are in favor of supporting our children, but what action is actually taken? Yes, the addition of new child care dollars in 1996 has helped welfare recipients, but it has done nothing for working, low-income families not receiving TANF. The Children's Defense Fund recommends that Congress pass comprehensive legislation that guarantees at least $20 billion over five years in new funding for the Child Care Development Block Grant (CCDBG). My Child Care Development Act goes beyond this, yet even my bill is just a first step. This bill is designed to provide affordable, quality child care to half of the ten million American children presently in need of subsidized care. It will provide $62.5 billion over 5 years—$12.5 billion a year—nearly three times the amount proposed in the President's most ambitious, and still unprosecuted, proposal. In 1997 the President proposed extending care to 600,000 children from poor families, leaving fully 80% of eligible children without aid. That was the last we heard of it. And it wasn't good enough, anyway.

If we are serious about putting parents to work and protecting children, we need to invest more in families and in child care help for them. Enabling families to work and helping children thrive means giving states enough money so that they can set reasonable eligibility levels, let families know that help is available, and take working families off the waiting lists.

The Child Care Development Act will require $62.5 billion over five years. There will be several offsets necessary if we are serious about giving children in this country the type of care they need and deserve. Shifting spending from these offsets demonstrates that our true national priority is children, not wasteful military spending and corporate tax loopholes.

The offsets that will be necessary are as follows. If we repeal the reductions in the Corporate Minimum Tax from the 1997 Budget Bill, we create $8.2 billion. The elimination of the Special Oil and Gas Depletion Allowance will make room for and additional $4.3 billion. An offset of $.575 billion will come from a repeal of the Enhanced Oil Recovery Credit and an offset of $13.767 billion will come from the elimination of exclusion for Foreign-Earned Income. From these four different offsets in tax provisions a sub total amount of $26.835 is created to spend on child care.

Defense Cuts will also be necessary in the amount of $24.4 billion. This will come from canceling the F–22, a plane plagued with troubles, which will free up $19.29 billion, and $5.11 billion will come from a reduction in Nuclear Delivery Systems Within Overall Limits of START II.

The remaining offsets can be made by reducing the Intelligence Budget by 5 percent, which would save $6.675 billion; by reducing Military Export Subsidies by $.85 billion; and by canceling the International Space Station, which costs $10.045 billion. All of which, when added together, allows for an additional $68.805 billion to be used to support our children.

This is, finally, a child care bill on the same scope as the problem itself. We as a nation are neglecting the most vulnerable and important portion of our society—our children. Here is an ambitious solution to this vast problem that has been plaguing our country. So that we don't have to be a country that just talks about putting our children first.

Mr. President, I want to speak a little bit from the heart. We are now at a point in our session where we have maybe 2½, 3 weeks to go. I think it is a tragedy that, in many ways, we are not involved in the work of democracy. From my point of view as a Senator from Minnesota, the work of democracy is to try to respond and speak to the concerns and circumstances of people's lives.

As I travel around Minnesota and travel around the country, I believe that, more than anything else, what families are saying to us is, "We want to do our very best by our kids, because if we as parents," or a single parent, "can do our best by our kids, we will do our best by our country."

One of the reasons we—I am talking about the people now in the country—are so disillusioned about our political process, above and beyond all that they hear about every day, which I hate, is that all that is happening is no good for our country. I think the polls show this as well, people are saying, "Get on with your governing, too; please govern; please be relevant and important to our lives." People feel like we are not doing that.

I have to say that if we can respond to what most people are talking about, which is how we earn a decent living and how do we give our children the care we know they need and deserve,

we will be doing well by people. If we can do everything that we can do as Senators, Democrats and Republicans, and if the private sector plays its role and we also engage in voluntarism and a lot of good things happen at the community level and non-Government organizations, and nonprofits play their role, and I say to Rabbi Shemtov, our guest chaplain today, the religious community needs to play their role: if we all do everything we can to enable parents or a parent to do their best by their kids, then that is the best single thing we can do.

What saddens me and also angers me is that all of a sudden, the focus on children is just off the table. We have lost it. It wasn't that many months ago that we were having conferences and we were talking about reports that were coming out and we couldn't stop discussing the development of the brain; how important it is to make sure that we get it right for our children because by age 3, if we don't get it right for them, they are never going to be ready for school and never be ready for life.

What happened? What happened to our focus? We have lost our focus. We have lost our way. We are talking a lot about values, and we are talking a lot about moral issues and we should—we should. But isn't it also a moral question or a moral issue that one out of every four children under the age of 3 is growing up poor in America today, and one out of every three children of color under the age of 3 is growing up poor in America today?

With our economy still humming along, how can it be that we cannot do better? I don't understand that. I say to the Rabbi and Chaplain, in the words of Rabbi Hillel, "If not now, when?"

Here we are with 3 weeks to go to this Congress, and we haven't done anything to help families, to help children, to fill their void so that we make sure that every child who comes to kindergarten comes to kindergarten ready to learn. If we are going to talk about education, and we are going to have a discussion about education—maybe we won't on the present course—I think we have to focus on the learning gap.

The truth of the matter is, we do quite well for kids in our public schools if they come to kindergarten ready to learn. It is the kids who come to kindergarten not ready to learn for whom we don't do well.

I am not trying to take K–12 off the hook. We need to do much better. But couldn't we say that as a national goal we want to make sure that every child who comes to kindergarten comes to kindergarten ready to learn? So that she knows the alphabet. He knows colors and shapes and sizes. She knows how to spell her name. They have been read to widely and they come with the readiness to learn.

The Presiding Officer, Senator DEWINE, is as committed to children as any Senator in the Senate. He knows what I am saying.

This is a cost-neutral bill. I will not go on about this bill's offsets. I cut into some tax loopholes and some subsidies that go to some of the largest corporations in America that do not need it. I raise some questions about whether we need some additional missiles and additional bombers. I redefine national security, and say, yes, we need a strong defense, but we need to take some of the money and invest for children. People can agree or disagree about where I get the money for this. Can't we agree that we take 1 percent of our budget and invest it in the health and skills and character and intellect of our children? They are 100 percent of our future.

I must repeat this point. I cannot believe that not that many months ago we were all talking about development of the brain, early childhood development. We were all talking about legislation—we were all talking about how we were going to do something to help parents do better by their kids, and we are not doing that.

That is why I introduce this legislation today. I do not think it is a cry in the wilderness, because I hope next year we are going to get this bill enacted. I am going to fight for this. And maybe, if I have a chance—I don't know that I will, given the next 3 weeks—I will bring some of it up as amendments. But we have to start speaking out about this, Mr. President. I say to Senator DEWINE, the Presiding Officer, we have to start speaking out about this because we should be doing better.

By Mr. FAIRCLOTH:

S. 2490. A bill to prohibit postsecondary educational institutions from requiring the purchase of goods and services from on-campus businesses, intentionally withholding course information from off-campus businesses, or preventing students from obtaining course information or materials from off-campus businesses; to the Committee on Labor and Human Resources.

THE COLLEGE COSTS SAVINGS ACT OF 1998

• Mr. FAIRCLOTH. Mr. President, this fall millions of college students are returning to campus. Today I introduce legislation that will ease the financial burden for these students, and reduce the costs of student financial aid on the taxpayers.

My bill seeks to inject some good, old-fashioned competition in the market for the purchase of college textbooks. Every student knows that the costs of textbooks can run into hundreds of dollars. It has become a major expense for most college students. My bill would bar financial aid to any university or any student attending a university that, directly or indirectly, requires students to purchase textbooks exclusively on campus. Further, the legislation would require that non-campus businesses have reasonable access to the textbook requirements of college courses, so that they too could stock textbooks and have them available to students at a more competitive price.

Regrettably, the way aid is currently disbursed by the Department of Education is artificially raising costs for students throughout the country. There is a nationwide use of financial aid to, in effect, channel funds exclusively to college "business-like" enterprises. These funding methods prevent financial aid from being spent at small businesses attempting to compete in the campus area marketplace.

Through the use of Department of Education-permitted "student accounts," colleges are creating their own dominance in such areas as college bookstores. Off-campus choice is virtually unavailable, even if off-campus stores offer students a less-expensive alternative. With the development of "campus cards," aid is even more captive to the on-campus economy.

I raised this issue with Secretary Riley at a hearing this spring and through a subsequent letter. The Department claims such distribution of aid funds is voluntary. The Department of Education stated in its June 22nd response that off-campus businesses can accept these campus cards only if an institution "wishes to establish a business relationship with an off-campus business." In most cases, that is not their wish. In most cases, only on-campus enterprises benefit. The Congress never intended financial aid funds—or any other funds—to be used for purposes of monopolization on college campuses. Competition in the campus-area marketplace is being restricted—and in many cases—eliminated. Students have little to no choice in shopping for books and materials.

The net result is that students are often paying higher costs for these goods and services, like textbooks. And, the federal government, providing student aid, is paying the higher price too.

There isn't a college student in this country that does not think that textbooks cost too much. Buying course books has become a major expense for the vast majority of students.

Evidence shows that off-campus bookstores are generally less-expensive if students receiving financial aid had full access to them. A recent report of the National Association of College Stores ("NACS") reports that each student spends an average of $300 for new textbooks at an on-campus bookstore compared with less than $200 for textbook purchases at an off-campus bookstore.

Additionally, another unfair practice that I have been informed about is that

some institutions refuse or obstruct access by off-campus college bookstores to the titles of textbooks required by the teaching staff. This legislation addresses both of these problems.

Further, I believe we should be taking any reasonable steps that we can to reduce the cost of attending college. A 1998 Congressional Commission on the Cost of Higher Education Report tells us that America has a "college cost crisis." It found that 71 percent of the public believes that a four-year education is not affordable for most Americans. Clearly, people are concerned about the ever-growing costs of higher education.

This legislation could save every student hundreds of dollars a year in college costs, if we can promote greater free market competition in the sale of college textbooks. As for financial aid, if this legislation can only save one percent of the amount that is spent on financial aid, it would approximate a $500 million savings.

Clearly parents, students and the federal government could use this kind of financial relief. Mr. President, I would urge my colleagues to support this legislation.●

By Mr. HATCH (for himself, Mr. LEAHY, and Mr. DEWINE):

S. 2491. A bill to amend title 18, United States Code, to protect children from sexual abuse and exploitation, and for other purposes; to the Committee on the Judiciary.

PROTECTION OF CHILDREN FROM SEXUAL PREDATORS ACT OF 1998

Mr. HATCH. Mr. President, today I am proud to introduce S. 2491 the Hatch-Leahy-DeWine "Protection of Children from Sexual Predators Act of 1998." I want to especially thank Senators LEAHY and DEWINE for their cooperation in drafting this exemplary piece of legislation. S. 2491 strengthens the ability of law enforcement and the courts to respond to high-tech sexual predators of children. Pedophiles who roam the Internet, purveyors of child pornography, and serial child molesters are specifically targeted.

The Internet is a wonderful creation. By allowing for instant communication around the globe, it has made the world a smaller place, a place in which people can express their thoughts and ideas without limitation. It has released the creative energies of a new generation of entrepreneurs and it is an unparalleled source of information.

While we should encourage people to take full advantage of the opportunities the Internet has to offer, we must also be vigilant in seeking to ensure that the Internet is not perverted into a hunting ground for pedophiles and other sexual predators, and a drive-through library and post office for purveyors of child pornography. Our children must be protected from those who would choose to sexually abuse and exploit them. And those who take the path of predation should know that the consequences of their actions will be severe and unforgiving.

How does this bill provide additional protection for our children? By prohibiting the libidinous dissemination on the Internet of information related to minors and the sending of obscene material to minors, we make it more difficult for sexual predators to gather information on, and lower the sexual inhibitions of, potential targets. And by requiring electronic communication service providers to report the commission of child pornography offenses to authorities, we mandate accountability and responsibility on the Internet.

Additionally, law enforcement is given effective tools to pursue sexual predators. The Attorney General is provided with authority to issue administrative subpoenas in child pornography cases. Proceeds derived from these offenses, and the facilities and instrumentalities used to perpetuate these offenses, will be subject to forfeiture. And prosecutors will now have the power to seek pretrial detention of sexual predators prior to trial.

Federal law enforcement will be given increased statutory authority to assist the States in kidnaping and serial murder investigations, which often involve children. In that vein, S. 2491 calls for the creation of the Morgan P. Hardiman Child Abduction and Serial Murder Investigative Resources Center. That center will gather information, expertise and resources that our nation's law enforcement agencies can draw upon to help combat these heinous crimes.

Sentences for child abuse and exploitation offenses will be made tougher. In addition to increasing the maximum penalties available for many crimes against children and mandating tough sentences for repeat offenders, the bill will also recommend that the Sentencing Commission reevaluate the guidelines applicable to these offenses, and increase them where appropriate to address the egregiousness of these crimes. And S. 2491 calls for life imprisonment in appropriate cases where certain crimes result in the death of children.

Protection of our children is not a partisan issue. We have drawn upon the collective wisdom of Senators from both sides of the aisle to draft a bill which includes strong, effective legislation protecting children. I call upon my colleagues to support this bill and speed its passage.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

[The bill was not available for printing. It will appear in a future edition of the RECORD.]

Mr. LEAHY. Mr. President, I know everyone is concerned about protecting this country's children from those who would prey upon them. Those concerns have intensified in recent years with the growing popularity of the internet and the world wide web. Cyberspace gives users access to a wealth of information; it connects people from around the world. But it also creates new opportunities for sexual predators and child pornographers to ply their trade. The challenge is to protect our children from exploitation in cyberspace while ensuring that the vast democratic forum of the Internet remains an engine for the free exchange of ideas and information.

The bill that we are introducing today meets this challenge. While it is not a cure-all for the scourge of child pornography, it is a good step toward limiting the ability of cyber-pornographers and predators from harming children.

This bill differs markedly from H.R. 3494, the child protection and sexual predator bill that the House passed last June. I should note that this bill mirrors a Hatch-Leahy-DeWine substitute to H.R. 3494, which passed the Judiciary Committee by unanimous consent this afternoon.

I thank the Chairman for working with me to fix the many problems in H.R. 3494, and to make this bill more focused and measured. Briefly, I would like to highlight and explain some of the differences between the bills.

As passed by the House, H.R. 3494 would make it a crime, punishable by up to 5 years' imprisonment, to do nothing more than "contact" a minor, or even just attempt to "contact" a minor, for the purpose of engaging in sexual activity. This provision does not appear in the Hatch-Leahy-DeWine bill. The act of making contact is not very far along the spectrum of an overt criminal act: it is only the expression of a criminal intention without follow through. A simple "hello" in an internet chat room, coupled with bad intentions, would expose the speaker to severe criminal sanctions. Targeting "attempts" to make contact would be even more like prosecuting a thought crime.

Another new crime created by the House bill prohibited the transmittal of identifying information about any person under 18 for the purpose of encouraging unlawful sexual activity. In its original incarnation, this provision would have had the absurd result of prohibiting a person under the age of consent from e-mailing her own address or telephone number to her boyfriend. We fixed this problem by making it clear that a violation must involve the transmission of someone else's identifying information. In addition, to eliminate any notice problem arising from the variations in state statutory rape laws, we lowered the

age of the identified minor from 18 to 16—the federal age of consent. Finally, we clarified that the defendant must know that the person about whom he was transmitting identifying information was, in fact, under 16. This change was particularly important because, in the anonymous world of cyberspace, a person may have no way of knowing the age of the faceless person with whom he is communicating.

I had many of the same concerns regarding another provision of the House bill, which makes it a crime to transfer obscene material to a minor. Again, the Hatch-Leahy-DeWine bill lowers the age of minority from 18 to 16 and provides that the defendant must know he is dealing with someone so young. I would add that this provision of the bill applies only to "obscene" material, that is, material that enjoys no First Amendment protection whatever—material that is patently offensive to the average adult. The bill does not purport to proscribe the transferral of constitutionally protected material that may, however, be unsuitable for minors. Besides raising serious constitutional concerns, such a provision would also have the unacceptable consequence of reducing the level of discourse over the Internet to what would be suitable for a sandbox.

The original House bill would also have criminalized certain conduct directed at a person who had been "represented" to be a minor, even if that person was, in fact, an adult. The evident purpose was to make clear that the targets of sting operations are not relieved of criminal liability merely because their intended victim turned out to be an undercover agent and not a child. The new "sting" provisions addressed a problem that simply does not currently exist: no court has ever endorsed an impossibility defense along the lines anticipated by the House bill. The creation of special "sting" provisions in this one area could lend credence to impossibility defenses raised in other sting and undercover situations. At the same time, these provisions would have criminalized conduct that was otherwise lawful: it is not a crime for adults to communicate with each other about sex, even if one of the adults pretends to be a child. Given these significant concerns, the "sting" provisions have been stricken from the Hatch-Leahy-DeWine bill.

Another major problem with the House bill is its modification of the child pornography possession laws. Current law requires possession of three or more pornographic images in order for there to be criminal liability. Congress wrote this requirement into the law as a way of protecting against government overreaching. By eliminating this numeric requirement, the House bill puts at risk the unsuspecting Internet user who, by inadvertence or mistake, downloads a single pornographic image of a child. The inevitable result would be to chill the free exchange of information over the web. I was unwilling to accept this possibility; the Hatch-Leahy-DeWine bill keeps current law in place.

Unlike H.R. 3494, the bill we are introducing today contains no new mandatory minimum sentences. I oppose the use of mandatory minimums because they take away the discretion of the sentencing judge, which can result in unjust sentences and can also induce defendants who would otherwise have pled guilty, hoping to obtain some measure of leniency from the court, to proceed to trial.

Another problematic provision of the House bill gives the Attorney General sweeping authority to subpoena records and witnesses in investigations involving crimes against children. We should be extremely wary of further extending the Justice Department's administrative subpoena power. The use of administrative subpoenas gives federal agents the power to compel disclosures without any oversight by a judge, prosecutor, or grand jury, and without any of the grand jury secrecy requirements. That being said, the secrecy requirements may pose a significant obstacle to the full and efficient cooperation of federal/state task forces in their joint efforts to reduce the steadily increasing use of the Internet to perpetrate crimes against children, including crimes involving the distribution of child pornography.

In addition, it appears that some U.S. Attorneys Offices are reluctant to open a grand jury investigation when the only goal is to identify individuals who have not yet, and may never, commit a federal (as opposed to state or local) offense. The Hatch-Leahy-DeWine bill accommodates all the competing interests by granting the Department a narrowly drawn authority to subpoena only the information that it most needs: routine subscriber account information from Internet service providers. Importantly, subscribers may obtain notice from their service provider.

The new reporting requirement established by H.R. 3494 is also troubling. Under current law, Internet service providers are generally free to report suspicious communications to law enforcement authorities. Under H.R. 3494, service providers would be required to report such communications when they involve child pornography; failure to do so would be punishable by a substantial fine.

Of course, we are all committed to eradicating the market for child pornography. Child pornography is inherently harmful to children. Service providers that come across such material should report it, and, in most cases, they already do. We must tread cautiously, however, before we compel private citizens to act as good Samaritans or to assume duties and responsibilities that are better left to law enforcement.

Working with the service providers, we have refined the House bill in various ways.

First, we raised the bar for the reporting duty; a service provider has no obligation to make a report unless it has "probable cause" to believe that the child pornography laws are being violated. By setting such a high standard, we intended to discourage service providers from erring on the side of over-reporting every questionable image. This would also overwhelm the FBI and law enforcement agencies.

Second, we provided that there is no liability for failing to make a report unless the service provider knew both of the existence of child pornography and of the duty to report it (if it rises to the level of probable cause).

Third, we made clear that we are not imposing a monitoring requirement of any kind: service providers must report child pornography when they come across it or it is brought to their attention, but they remain under no obligation to go out looking for it.

Fourth, we added privacy protections for any information reported under the bill.

Fifth, we lowered the maximum fine for first offenders to $50,000; a second or subsequent failure to report, however, may still result in a fine up to $100,000.

Thus improved, I am confident that the reporting requirement will accomplish its objectives without unduly burdening the service providers or violating the privacy rights of internet users.

Beyond this, the Hatch-Leahy-DeWine bill strips the House bill of various other extraneous or improvident provisions. Our bill is also free of certain add-ons that appeared in the original version offered by Senator HATCH. In particular, the original version would have opened the floodgates of federal inchoate crime prosecutions by creating a general attempt statute—making it a crime to commit each and every offense in title 18—and by making the penalty for its violation as well as for violation of the general conspiracy statute (which is now capped at 5 years) equal to the penalty for the offense that was the object of the attempt or conspiracy. The Chairman's original bill also created a new rule of criminal procedure requiring defendants to provide notice of their intention to assert an entrapment defense.

I think there are good reasons why these ideas have been rejected in the past, both by the Congress and by the Federal Judicial Conference, and why they are opposed by business and civil liberties groups alike. At the very least, we should not usher in such radical changes to the federal criminal law without more careful consideration, after proper hearings.

In conclusion, I commend Senators HATCH and DEWINE for their efforts to

address the terrible problem of child predators and pornographers. I am glad that we were able to join forces to construct a bill that goes a long way towards achieving our common goals.•

• Mr. LAUTENBERG. Mr. President, I rise to express my outrage at the depraved criminals who are using the Internet to exploit children.

Recently, the United States Customs Service, in cooperation with authorities in fourteen other nations, conducted successful raids on an extensive Internet child pornography ring. The ring, called the Wonderland Club, had been distributing more than 100,000 pornographic photographs of children. Some of the children were as young as 18 months. I am deeply disturbed, and disgusted, that people would victimize innocent children in this way.

I want to commend the Customs Service and the other international law enforcement agencies involved on their successful effort. They made 46 arrests worldwide and there may be hundreds more after all the evidence is analyzed. The raids also covered 22 states, including one location in my home state of New Jersey.

While this raid has put this one ring of Internet pedophiles out of business, I am concerned that there may be others. Many law enforcement officials are concerned that the advancements in Internet technology are making it that much easier for pedophiles to conduct their sickening schemes. Additionally, the anonymity of the Internet makes it easier for these criminals to evade detection.

Clearly, we must fight back against these cyberspace criminals. One step that we can take is to ensure strong penalties for those who use the Internet for these horrible purposes. That is why I support the Child Protection and Sexual Predator Punishment Act of 1998. This measure would double the maximum penalty for sexual abuse of a child under twelve—from ten years to twenty years. It would also increase the prison terms and fines for anyone using the Internet, or the mail, to contact a minor for the purpose of engaging in sexual activity or transferring obscene material.

I urge my colleagues to support this bill, and I hope it will pass the Senate before we adjourn this year. We must act quickly to help prevent another generation of children from suffering.•

By Mr. GRASSLEY (for himself and Mr. GRAHAM):

S. 2492. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for the long-term care insurance costs of all individuals who are not eligible to participate in employer-subsidized long-term care health plans; to the Committee on Finance.

LONG-TERM CARE AND RETIREMENT SECURITY ACT

• Mr. GRASSLEY. Mr. President, I introduce the Long-Term Care and Retirement Security Act. This bill is an important first step in helping Americans prepare for their long-term care needs. A companion bill to the Long-Term Care and Retirement Security Act has been introduced in the House of Representatives by Representative NANCY JOHNSON.

Longer and healthier lives are a blessing and a testament to the progress and advances made by our society. However, all Americans must be alert and prepare for long-term care needs. The role of private long-term care insurance is critical in meeting this challenge.

The financial challenges of health care in retirement are not new. Indeed, too many family caregivers can tell stories about financial devastation that was brought about by the serious long-term care needs of a family member. Because increasing numbers of Americans are likely to need long term care services, it is especially important to encourage planning today.

Most families are not financially prepared when a loved one needs long-term care. When faced with nursing home costs that can run more than $40,000 a year, families often turn to Medicaid for help. In fact, Medicaid pays for nearly two of every three nursing home residents at a cost of more than $30 billion each year for nursing home costs. With the impending retirement of the Baby Boomers, it is imperative that Congress takes steps now to encourage all Americans to plan ahead for potential long-term care needs.

The Long-Term Care and Retirement Security Act will allow Americans who do not currently have access to employer subsidized long-term care plans to deduct the cost of such a plan from their taxable income. This bill will encourage planning and personal responsibility while helping to make long-term care insurance more affordable for middle class taxpayers.

This measure will encourage Americans to be pro-active and prepare for their own long term care needs by making insurance more affordable. I urge my colleagues to support this bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

[The bill was not available for printing. It will appear in a future edition of the RECORD.]

• Mr. GRAHAM. Mr. President, I rise today, along with Senator GRASSLEY, to introduce legislation designed to protect our nation's families hard-earned savings and ensure quality long-term care.

Our nation has achieved great strides in the 20th century in delivering quality health care and improving the standards of living of its citizens. Just last year Congress added preventive benefits to the Medicare program, thereby ensuring that Americans will have longer, more productive lives. In fact, thanks to these developments life expectancy has increased from 47 years in 1900 to 68 years in 1950, and has steadily increased to 76 years in 1991. These tremendous advances in medicine have also produced challenges because as more and more people live longer, chances increase that they will experience chronic illnesses and disability.

A three-year stay in a nursing home can cost upwards of $125,000. As a result, nearly half of all nursing home residents who enter as privately-paying patients exhaust their personal savings and lose health insurance coverage during their stay. Medicaid becomes many retirees' last refuge of financial support.

Another challenge facing America in the future will be the aging of the "baby boomers." Unfortunately, many "baby boomers" are not planning for the future because they are preoccupied with more immediate concerns. This portion of our population represents more than half of all workers and are the parents of 75% of the nation's children under age 18. Child care, housing expenses and saving for their children's college education tend to dominate their budgets.

Many Americans mistakenly believe that Medicare will pay for their long-term care needs. "Baby boomers" need to understand the limitations of government programs with regard to long-term care. In reality, this program primarily focuses on hospital stays and physician visits. Without adequate private insurance a significant number of retirees are likely to deplete their assets in order to receive essential long-term care.

Insurance products are available to ensure that an individual's long-term care needs are met. However, current tax law establishes several obstacles to purchasing long-term care insurance. First, most Americans purchase health insurance through their employer. Over sixty-five percent of 235 million individuals, under age 65, purchase their health insurance through their employer or union. However, tax law prohibits an employer from offering employer subsidized long-term care insurance products through its employee benefits plans.

Since the enactment of the Kennedy-Kassebaum legislation of 1996, purchasers of qualified long-term care insurance policies are permitted to deduct the premiums as part of their medical expenses. However, for taxpayers other than the self-employed, the tax code restricts the medical expense deduction to the portion of expenses exceeding 7.5 percent of their income—a threshold that bars the deduction for 95 percent of non-self employed people.

Kennedy-Kassebaum also precluded employees from purchasing long term care insurance on a pre-tax basis through their employer. Specifically, the legislation prohibited the inclusion of long-term care insurance in employer-sponsored cafeteria plans and flexible spending accounts. Only if the employer actually pays for the insurance can the employee obtain the coverage on a tax-free basis, but few employers currently are willing to pay for the coverage. The result is that only a small percentage of purchasers of long-term care insurance can obtain the insurance on a pre-tax basis.

Second, long-term care insurance paid directly by the taxpayer is only deductible if the individual both itemizes his or her deductions and already has deductible medical expenses in excess of 7.5 percent of their adjusted gross income.

Suppose Mr. and Ms. Jones earn $40,000 per year and want to purchase long-term care insurance. Under current law, health and medical expenses are not deductible unless they exceed 7.5 percent of $40,000, which is $3,000.

Suppose the premiums for long-term care insurance totaled $1,000. The Joneses would get no tax benefit from the deduction of the premiums unless they already had $2,000 in other qualified medical expenses, and would not get the full benefit of the deduction unless they had $3,000 in other qualified expenses.

Even if they meet this threshold, the Joneses still will not benefit from the current deduction unless their total itemized deductions—health and non-health—exceed the standard deduction, currently $6,900 for a married couple.

It becomes clear that the current deduction for log-term care insurance premiums is not providing a very strong incentive to prepare for one's health retirement. A recent survey shows that premium deductibility was cited most frequently as the action that would make non-buyers more interested in long-term care insurance.

Looking into the future, there are two key goals for retirement security: (1) saving enough money for retirement, and (2) protecting against life's uncertainties, including long-term care costs. An unanticipated nursing home stay can deplete hard-earned savings and threaten a family's financial future. This situation could be especially difficult for the surviving spouse of someone who has had a long-term care stay and depleted all of their retirement savings. The widow or widower can have many years left to live and no remaining retirement assets.

A recent study by the American Council for Life Insurance indicates that long-term care insurance has the potential to significantly reduce future out-of-pocket and Medicaid expenditures for long-term care. If individuals are covered by long-term care insurance, they are less likely to become Medicaid beneficiaries, thus preserving the individual's savings and decreasing government spending. This would also reinforce Medicaid's intent of serving as a safety net for those who are most needy.

With the provisions in this legislation, Americans can be more assured of a financially secure retirement.•

By Mr. HARKIN:

S. 2493. A bill to amend the Internal Revenue Code of 1986 to allow a tax credit for the nutrient management costs of animal feeding operations; to the Committee on Finance.

THE ANIMAL AGRICULTURE ENVIRONMENTAL INCENTIVES ACT OF 1998

• Mr. HARKIN. Mr. President, recently we have seen growing concerns around the country about the environmental problems associated with livestock, dairy and poultry production. Continued reports of manure spills, evidence of water pollution from manure runoff, and ongoing complaints about odor and air pollution are creating increasing pressure on the livestock and poultry industry.

Last year, I introduced the Animal Agriculture Reform Act, the first legislation of its kind to call for national environmental standards for animal feeding operations. Just this week, the U.S. Environmental Protection Agency and the U.S. Department of Agriculture announced what they call a Draft Unified National Strategy for Animal Feeding Operations. That is a big title, but what it boils down to is a comprehensive, national plan for tackling the environmental problems of the livestock and poultry industry.

The Administration's Strategy looks a lot like my bill, so I think it is a good start. The Strategy calls for mandatory nutrient management plans for larger operations and restrictions on manure application to protect the environment—those provisions are at the heart of my bill and also are the focus of the EPA/USDA Strategy.

However, the Administration's plan is only a strategy and it must be implemented. We will still see manure spills, runoff and threatened waterways around the country until we have better management and better controls at animal feeding operations.

One of the keys to getting this job done, and to helping producers comply with EPA regulations, is finding solutions rather than imposing sanctions. That is why today I am introducing a bill that would provide a 25 percent tax credit to livestock producers to purchase equipment for new and innovative ways to process and use manure.

The aim of my bill is to help producers help themselves when it comes to manure management, particularly in circumstances where too much manure is generated to be safely applied to land.

The tax credit would cover equipment that allows farmers to carefully apply only as much manure as their crops need, and equipment that processes manure for safer handling, better nutrient value, or alternative uses like energy generation. This is the kind of equipment that producers need to comply more easily with nutrient management plans, move manure more economically to areas where crop land is available, or adopt alternative uses for manure.

The bottom line as I see it is that livestock, dairy and poultry producers in this country are going to face limits on manure application. These limits are going to have a serious effect on some operations, and particularly in certain regions of the country.

Of course, there are all kinds of operations that make up our livestock, dairy and poultry industry, and each producer needs an environmental solution that makes sense for that individual operation.

Some producers have enough land to apply all of their manure. For these producers, up to date facilities and careful management should be sufficient. For other producers, simple composting or efficient solid liquid separation may be the solution, so that solids can be transported more economically for off-site land application. In still other situations, particularly for very large operations or in regions with intensive production, we may need to adopt more advanced technology.

I believe that the bill I am introducing today is just a first step along the way to making the adoption of better technologies, whether low-tech composting or high-tech processing, more affordable for any size producer.

I want to thank the National Pork Producers Council for its support of this tax credit initiative. The National Pork Producers have been far in front of the crowd in engaging policy makers at the national level and in working with pork producers to address environmental problems. I look forward to continuing to work with them on these issues.

Let me be clear that I want the livestock industry to thrive in both Iowa and across the United States. But for our industry to flourish, we need to get our environmental house in order. I do believe that we can have both a healthy livestock industry and a sound environment, and I hope that the Congress will act quickly to enact this tax credit to help producers get the tools they need to reach this goal.

Mr. President, I ask unanimous consent that the bill and a letter of endorsement from the NPPC be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

[The bill was not available for printing. It will appear in a future edition of the RECORD.]

NATIONAL PORK PRODUCERS COUNCIL
Washington, DC, September 16, 1998.

Hon. TOM HARKIN,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR HARKIN: I'm writing on behalf of the members of the National Pork Producers Council (NPPC) to express our support for allowing livestock producers to claim an income tax credit for innovative environmental management equipment. We believe the goal of any tax credit for livestock manure handling practices and equipment should be to enhance the quality of surface and ground water and the air. The focus should be on those practices which are an alternative to traditional storage and handling practices or which significantly improve the function of traditional storage and handling methods.

Pork producers have been very aggressive in the development of new regulations for their operations through the National Environmental Dialogue on Pork Production recommendations. We recognize that sound environmental management and compliance with new regulations will, in many cases, require producers to adopt and pay for new equipment. In an increasingly competitive world pork industry, such a tax credit will provide U.S. producers an important advantage in the rapid development of sustainable, affordable production systems.

We look forward to working with you to enact this important initiative.

Sincerely,

DONNA REIFSCHNEIDER,
President.•

By Mr. MCCAIN (for himself, Mr. LEAHY, Mr. HATCH, Mr. DEWINE, and Mr. KOHL):

S. 2494. A bill to amend the Communications Act of 1934 (47 U.S.C. 151 et seq.) to enhance the ability of direct broadcast satellite and other multichannel video providers to compete effectively with cable television systems, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE MULTICHANNEL VIDEO COMPETITION ACT OF 1998

• Mr. MCCAIN. Mr. President, I introduce legislation that will address two problems confronting the millions of Americans who subscribe to satellite TV service. I am delighted to have Senators HATCH, LEAHY, DEWINE and KOHL as original co-sponsors.

These two problems involve the legal and practical difficulties satellite TV providers currently face in providing network TV stations as part of their service package.

The first problem is that the law effectively prevents satellite TV companies from providing local network stations to their subscribers. That hampers the ability of satellite TV to compete effectively with cable TV and, by doing so, to check cable rate increases.

The second problem is that existing law also forbids satellite TV providers from offering distant network stations unless the subscriber happens to be located beyond the reach of local network stations. But the satellite companies and their subscribers claim that the law's definition of what constitutes decent off-air TV reception is too narrow. This has resulted in many situations in which consumers who cannot receive local network stations as a practical matter, are nevertheless regarded as being able to receive them, as a legal matter. In many cases, satellite TV providers are offering distant network signals even though it's actually illegal. This has led to litigation and a court order that could cause more than a million satellite TV subscribers throughout the country to lose their network TV within the next several weeks.

Mr. President, we need to fix these problems, and we need to fix them quickly. No satellite TV company should be forced to suddenly discontinue any customer's network TV service, and satellite TV companies should be able to provide their subscribers with local network TV stations, just as cable TV companies can.

The legislation being introduced today is intended to strike a reasonable balance between the competing interests of cable operators, broadcasters, and satellite TV providers, to enable satellite TV providers to offer network stations, to assure that no satellite TV subscriber is unfairly deprived of network TV service, to assure local broadcasters are not deprived of the support of their local audience, and to make satellite TV a more effective competitive alternative to cable TV.

This legislation will also require changes to the Copyright Act, the Satellite Home Viewers Act, and the Communications Act. The distinguished Chairman of the Senate Judiciary Committee, Senator HATCH, has developed legislation to give satellite TV providers a compulsory copyright license enabling them to offer local TV stations. I am also cosponsoring this legislation.

The bill I am introducing today will be merged with Senator HATCH's legislation to provide a comprehensive and workable solution to all these problems. Let me briefly describe what my bill provides.

My bill directs the Federal Communications Commission to straighten out the rules governing satellite TV companies' carriage of distant network TV stations, and provides guidelines for the Commission's decision. It will also guarantee that no satellite TV subscriber loses network stations before the FCC issues revised rules next February. It will require that satellite TV companies carry all local TV stations, just as cable systems must, when it becomes feasible for them to do so. In the interim it will allow them to carry fewer than all local stations as long as they compensate any local stations that are not carried for any loss of revenue the stations will suffer as a result.

During the last several weeks the Majority Leader, Senator LOTT, and the Ranking Member of the Commerce Committee, Senator FRITZ HOLLINGS, have worked tirelessly with the broadcast and satellite industries to develop a compromise that will avoid the disruption of satellite TV subscribers network TV service until this legislation can be enacted into law. I would like to recognize them for their efforts on behalf of every member of the public who subscribes to multichannel video service, whether by satellite or by cable. All of us should be grateful for their leadership on this issue.

I intend to hold hearings on the status of the parties efforts to reach a compromise, and on the legislation sponsored by Senator HATCH and myself, next week. It is my hope that broadcasters and satellite TV providers can reach a mutually-acceptable temporary agreement that will enable Senator HATCH and myself to enact our comprehensive legislation as soon as possible, and in any event no later than early in the next Session of Congress.•

• Mr. KOHL. Mr. President, I support this measure, which will help create competition between satellite and cable television. Read in tandem with our Judiciary Committee proposal, it offers the promise of a comprehensive solution that removes some of the roadblocks to true video competition. Let me commend Senators MCCAIN, HOLLINGS, HATCH, LEAHY, DEWINE and LOTT for their efforts, all of which were instrumental in the creation of a comprehensive package with a real chance to be enacted this year.

Mr. President, let me explain why we need to move on these measures before the opportunity passes us by. Consumers want real choices. But they won't have a fair opportunity to choose between cable, satellite or other video systems if their network signals are, in essence, separate and unequal.

The legislation that the Judiciary and Commerce Committees have been working on together would eliminate this problem. They extend the Satellite Home Viewer Act, give satellite carriers the ability to provide local television broadcast signals (while appropriately phasing in must-carry), reduce the royalty fees for these signals, give the FCC time to take a much-needed second look at the definition of "unserved households," and make sure no one—no one—is terminated before February 28th of next year.

Mr. President, these bills are not perfect pieces of legislation. And we invite the interested parties to work with us to improve them. But the overall package is a fair and comprehensive one. If we continue to work together, then consumers will have real choices

among video providers, and that television programming will be more available and affordable for all of us. In addition, we will help to preserve local television stations, who provide all of us with vital information like news, weather, and special events—especially sports.

I urge my colleagues to support these bipartisan bills, which will move us toward video competition in the next millennium, and I hope we can enact them as one before this Congress adjourns in October.●

By Mr. MOYNIHAN (for himself and Mr. D'AMATO):

S. 2495. A bill to establish the Kate Mullany National Historic Site in the State of New York, and for other purposes; to the Committee on Energy and Natural Resources.

THE KATE MULLANY NATIONAL HISTORIC SITE ACT

●Mr. MOYNIHAN. Mr. President, it is with great pride, with my distinguished colleague Senator D'AMATO, I introduce the "Kate Mullany Historic Site Act," a bill to designate the Troy, New York home of pioneer labor organizer Kate Mullany as a National Historic Site. A similar measure introduced in the House of Representatives this year by Congressman MICHAEL R. MCNULTY has engendered a great deal of support and cosponsorship by over 100 members.

Like many Irish immigrants settling in Troy, Kate Mullany found her opportunities limited to the most difficult and low-paying of jobs, the collar laundry industry. Troy was then known as "The Collar City"—the birthplace of the detachable shirt collar. At the age of 19, Kate stood up against the often dangerous conditions and meager pay that characterized the industry and lead a movement of 200 female laundresses demanding just compensation and safe working conditions. These protests marked the beginning of the Collar Laundry Union, which some have called "the only bona fide female labor union in the country."

Kate Mullany's courage and organizing skills did not go unnoticed. She later traveled down the Hudson River to lead women workers in the sweatshops of New York City and was ultimately appointed Assistant Secretary of the then National Labor Union, becoming the first women ever appointed to a national labor office.

On April 1, 1998, Kate Mullany's home was designated as a National Historic Landmark by Secretary of the Interior Bruce Babbitt and on July 15 First Lady Hillary Rodham Clinton presented citizens of Troy with the National Historic Landmark plaque in a celebration. Given the recent attention to the contributions of Kate Mullany, I am quite pleased to introduce this bill with my colleague Senator D'AMATO today.●

By Mr. SPECTER:

S. 2496. A bill to designate the Department of Veterans Affairs medical center in Aspinwall, Pennsylvania, as the "H. John Heinz III Department of Veterans Affairs Medical Center"; to the Committee on Veterans' Affairs.

H. JOHN HEINZ III VETERANS AFFAIRS MEDICAL CENTER

Mr. SPECTER. Mr. President, today I am introducing a bill to honor the memory of Senator John Heinz by designating the Veterans Medical facility in Aspinwall, Pennsylvania, as the H. John Heinz III Veterans Affairs Medical Center.

Recognition of the distinguished work of Senator Heinz has been memorialized in a variety of ways. This designation of the Veterans Center pays tribute to his outstanding work for America's veterans. Senator Heinz, a veteran himself, made many contributions to this nation and to America's veterans.

H. John Heinz III was born on October 23, 1938 in Pittsburgh, Pennsylvania. While he grew up in San Francisco, California, he spent many summers in Pittsburgh with his father who was chairman of the H.J. Heinz Company founded in 1869 by the Senator's great-grandfather. John graduated from Yale University with honors in 1960 and piloted a single-engine plane through Africa and the Middle East, ending up in Sydney, Australia working as a salesman for a truck company. He entered Harvard Business School in 1961 and the following year worked for the summer with the Union Bank of Switzerland in Geneva. While in Switzerland he met his future wife, Teresa Simoes Ferreira, who was attending graduate school in Geneva. He received his Master's degree in Business Administration from Harvard in 1963.

After enlisting in the U.S. Air Force Reserve, John Heinz served on active duty in 1963 at Lackland Air Force Base in San Antonio, Texas. For the remainder of his enlistment, he served with the 911th Troop Carrier Group based at the Greater Pittsburgh Airport. As an Airman Third Class, he received a U.S. Department of Defense citation for suggestions to improve the management of parts and supplies, saving the Air Force $400,000 annually. With the rank of staff sergeant, he received an honorable discharge from the Air Force Reserves in 1969.

In 1964, John Heinz served as a special assistant to Senator Hugh Scott (R-PA) in Washington, D.C. and as assistant campaign manager in Senator Scott's successful reelection bid. Returning to Pittsburgh, he was employed in the financial and marketing divisions of the H.J. Heinz Company from 1965 to 1970. He married Teresa in 1966, and they subsequently had three sons: Henry John IV, Andre, and Christopher. He taught at the Graduate School of Industrial Administration at Carnegie Mellon University in Pittsburgh during the 1970-71 academic year.

Senator Heinz was a stalwart of the Republican Party, contributing generously of his time, talents and efforts by campaigning for others. He was active in the campaigns of Governor William Scranton for the Republican Presidential nomination in 1964, Judge Maurice B. Cohill for Juvenile Court in 1965, Richard L. Thornburgh for Congress in 1966, Robert Friend for County Controller in 1967, and John Tabor for Mayor in 1969. He chaired the Pennsylvania Republican platform committee hearings in 1968, won election as a delegate at the Republican National Convention in the same year (and again in 1972, 1976, and 1980), and chaired the Pennsylvania Republican State Platform Committee in 1970.

Upon the sudden death in April 1971 of Congressman Robert J. Corbett (R-PA), John Heinz pursued the unexpired term and won, making him the youngest Republican member of the U.S. House of Representatives at 33 years old. In November 1972 and 1974, John Heinz was re-elected to the House.

When Senator Hugh Scott announced his retirement in December 1975, Senator Heinz, George Packer and I ran for the Republican nomination for U.S. Senate in the April 1976 primary. After Senator Heinz won that primary contest, I endorsed him at a major rally in September 1976 in Delaware County at the kick off of his campaign in Southeastern Pennsylvania. Senator Heinz defeated Congressman William J. Green III and took his seat in the United States Senate on January 3, 1977.

In his capacity as Chairman of the Republican Senatorial Campaign Committee, Senator Heinz gave me tremendous support and was instrumental in my election to the United States Senate in November 1980.

Thereafter, Senator Heinz and I established a very close friendship and working relationship. Although I cannot personally attest to all other Senate relationships, I believe that our cooperation and coordination was as close as any two Senators from the same state in the Senate's history.

When one of us was unable to attend a specific event, the other was always ready, willing and able to take his place. We discussed the pending international, national and state issues incessantly. On the late night sessions, and there were many, I would drive John home in my aging Jaguar leaving him off in the alley behind his home in Georgetown.

On one occasion in 1982 we had a lengthy discussion about the upcoming vote the next day on a constitutional amendment for a balanced budget. I laid out my reasons for opposing the amendment and John gave me his reasons for supporting it. I found his arguments so persuasive that I voted for

the constitutional amendment for the balanced budget the next day. I was surprised to find that he voted against it. We had a good laugh on that exchange of views and our reciprocal change of positions.

Senator Heinz and I made it a practice to inform and invite the other to all of our events. On April 3, 1991, our paths crossed in Altoona, Pennsylvania, where he had scheduled a meeting with a group of doctors. I accepted his invitation and recall his warm greeting when Joan and I arrived to join the discussion. He kissed Joan on the cheek and joked with me about calling her "blondie." We parted that day and that was the last time I saw John Heinz because he had the fatal air crash the next day, April 4, 1991, in a small plane from Williamsport, Pennsylvania, to Philadelphia.

Senator Heinz was an extraordinary man and a great Senator. The designation of the Veterans Medical Center in Aspinwall, Pennsylvania, is an appropriate additional tribute to his memory.

Senator Heinz' work on behalf of the citizens of Pennsylvania, young and old, will long be remembered. He was a tireless advocate for seniors, working to ensure the long-term viability of the Social Security system. He fought to protect Medicare and Medicaid patients. He authored the Age Discrimination and Employment Amendments of 1985, protecting the employment rights of our nation's seniors. He authored a bill to strengthen the U.S. job training program for displaced veterans in the work force. For military families, he worked to ensure that the children of service members were adequately cared for. He worked on behalf of U.S. workers and businesses in an increasingly international marketplace. He also played an important role in ensuring appropriate environmental protections in Pennsylvania and across the nation. John Heinz had a remarkable career of public service.

As Chairman of the Senate Committee on Veterans' Affairs, I ask my colleagues to support this measure naming the Department of Veterans Affairs Medical Center in Aspinwall, Pennsylvania, after our departed colleague, Senator H. John Heinz III.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2496

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF H. JOHN HEINZ IN DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, ASPINWALL, PENNSYLVANIA.

The Department of Veterans Affairs medical center in Aspinwall, Pennsylvania, is hereby designated as the "H. John Heinz III Department of Veterans Affairs Medical Center". Any reference to such medical center in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the "H. John Heinz III Department of Veterans Affairs Medical Center".

ADDITIONAL COSPONSORS

S. 852

At the request of Mr. LOTT, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.

S. 1805

At the request of Mr. KENNEDY, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1805, a bill to amend the Fair Labor Standards Act of 1938 to increase the Federal minimum wage.

S. 1976

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1976, a bill to increase public awareness of the plight of victims of crime with developmental disabilities, to collect data to measure the magnitude of the problem, and to develop strategies to address the safety and justice needs of victims of crime with developmental disabilities.

S. 2022

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 2022, a bill to provide for the improvement of interstate criminal justice identification, information, communications, and forensics.

S. 2041

At the request of Mr. SMITH, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 2041, a bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Willow Lake Natural Treatment System Project for the reclamation and reuse of water, and for other purposes.

S. 2148

At the request of Mr. HATCH, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 2148, a bill to protect religious liberty.

S. 2233

At the request of Mr. CONRAD, the names of the Senator from Nevada (Mr. REID) and the Senator from Wyoming (Mr. THOMAS) were added as cosponsors of S. 2233, a bill to amend section 29 of the Internal Revenue Code of 1986 to extend the placed in service date for biomass and coal facilities.

S. 2323

At the request of Mr. GRASSLEY, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 2323, a bill to amend title XVIII of the Social Security Act to preserve access to home health services under the medicare program.

S. 2346

At the request of Mr. ALLARD, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 2346, a bill to amend the Internal Revenue Code of 1986 to expand S corporation eligibility for banks, and for other purposes.

S. 2364

At the request of Mr. CHAFEE, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from New Jersey (Mr. TORRICELLI) were added as cosponsors of S. 2364, a bill to reauthorize and make reforms to programs authorized by the Public Works and Economic Development Act of 1965.

S. 2432

At the request of Mr. HARKIN, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 2432, a bill to support programs of grants to States to address the assistive technology needs of individuals with disabilities, and for other purposes.

SENATE RESOLUTION 257

At the request of Mr. MURKOWSKI, the names of the Senator from Ohio (Mr. DEWINE), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of Senate Resolution 257, a resolution expressing the sense of the Senate that October 15, 1998, should be designated as "National Inhalant Abuse Awareness Day."

SENATE RESOLUTION 259

At the request of Mr. THURMOND, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of Senate Resolution 259, a resolution designating the week beginning September 20, 1998, as "National Historically Black Colleges and Universities Week," and for other purposes.

SENATE RESOLUTION 279—EXPRESSING THE SENSE OF THE SENATE SUPPORTING THE RIGHT OF THE UNITED STATES CITIZENS IN PUERTO RICO TO EXPRESS THEIR DESIRES REGARDING THEIR FUTURE POLITICAL STATUS

Mr. TORRICELLI (for himself, Mr. D'AMATO, Mr. MURKOWSKI, Mr. CRAIG, Mr. AKAKA, Mr. LAUTENBERG, Mr. GRAHAM, Mr. DASCHLE, Ms. LANDRIEU, Mr. LIEBERMAN, Mr. HATCH, Mr. DOMENICI, Mr. STEVENS, Mr. BENNETT, and Mr. HARKIN): submitted the following resolution; which was considered and agreed to:

S. RES. 279

Whereas nearly 4,000,000 United States citizens live in the island of Puerto Rico;

Whereas 1998 marks the centenary of the acquisition of the island of Puerto Rico from Spain;

Whereas in 1917 the United States granted United States citizenship to the inhabitants of Puerto Rico;

Whereas since 1952, Puerto Rico has exercised local self-government under the sovereignty of the United States and subject to the provisions of the Constitution of the United States and other Federal laws applicable to Puerto Rico;

Whereas the Senate supports and recognizes the right of United States citizens residing in Puerto Rico to express their views regarding their future political status; and

Whereas the political status of Puerto Rico can be determined only by the Congress of the United States: Now, therefore, be it

Resolved,

SECTION 1. SENSE OF THE SENATE REGARDING A REFERENDUM ON THE FUTURE POLITICAL STATUS OF PUERTO RICO.

It is the sense of the Senate that—

(1) the Senate supports and recognizes the right of United States citizens residing in Puerto Rico to express democratically their views regarding their future political status through a referendum or other public forum, and to communicate those views to the President and Congress; and

(2) the Federal Government should review any such communication.

SENATE RESOLUTION 280—DIRECTING THE PRINTING AS A SENATE DOCUMENT OF A COMPILATION OF MATERIALS ENTITLED "HISTORY OF THE UNITED STATES SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY"

Mr. LUGAR (for himself and Mr. HARKIN) submitted the following resolution; which was considered and agreed to:

S. RES. 280

Resolved,

SECTION 1. PRINTING OF HISTORY OF THE UNITED STATES SENATE COMMITTEE ON AGRICUTURE, NUTRITION, AND FORESTRY.

The Public Printer shall print—

(1) as a Senate document a compilation of materials, with illustrations, entitled "History of the United States Senate Committee on Agriculture, Nutrition, and Forestry"; and

(2) 100 copies of the document in addition to the usual number.

AMENDMENTS SUBMITTED

CONSUMER BANKRUPTCY REFORM ACT OF 1998

GRASSLEY (AND DURBIN) AMENDMENT NO. 3595

Mr. GRASSLEY (for himself and Mr. DURBIN) proposed an amendment to amendment No. 3559 proposed by Mr. GRASSLEY to the bill (S. 1301) to amend title 11, United States Code, to provide for consumer bankruptcy protection, and for other purposes; as follows:

(1) In section 102(a)(5) strike "a party in interest" and insert "only the judge, United States trustee, bankruptcy administrator or panel trustee";

(2) In section 102(a)95) strike "not".

Strike 317 and replace with:

"Not later than 180 days after the date of enactment of this Act, the Federal Trade Commission shall promulgate regulations defining "household goods" under Section 522(c)(3) in a manner suitable and appropriate for cases under Title 11 of the United States Code. If new regulations are not effective within 180 days of enactment of this Act, then "household goods" under Section 522(c)(3) shall have the meaning given that term in section 444.1(i) of Title 16, of the Code of Federal Regulations, except that the term shall also include any tangible personal property reasonably necessary for the maintenance or support of a dependent child."

At the end of Title III, insert:

11 U.S.C. 507(a) to add a new section 507(a)(10) to read:

"Tenth, allowed claims for death or personal injury resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug or another substance."

Strike existing 315 and add the following:

SEC. 315. NONDISCHARGEABLE DEBTS.

Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

"(14A) incurred to pay a debt that is nondischargeable by reason of section 727, 1141, 1228 (a) or (b), or 1328(b), or any other provision of this subsection, where the debtor incurred the debt to pay such a nondischargeable debt with the intent to discharge in bankruptcy the newly-created debt."

At the appropriate place in Title II, insert the following:

SEC. ___. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY DWELLING.

(a) OPEN-END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637a(a)(13)) is amended—

(A) by striking "CONSULTATION OF TAX ADVISOR.—A statement that the" and inserting the following: "TAX DEDUCTIBILITY.—A statement that—

"(A) the"; and

(B) by striking the period at the end and inserting the following: "; and

"(B) in any case in which the extension of credit exceeds the fair market value of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.".

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking "If any" and inserting the following:

"(1) IN GENERAL.—If any"; and

(B) by adding at the end the following:

"(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling shall include a clear and conspicuous statement that—

"(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

"(B) the consumer may want to consult a tax advisor for further information regarding the deductibility of interest and charges.".

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

(A) in subsection (a), by adding at the end the following:

"(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

"(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

"(B) the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges."; and

(B) in subsection (b), by adding at the end the following:

"(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.".

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

"(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling shall clearly and conspicuously state that—

"(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

"(2) the consumer may want to consult a tax advisor for further information regarding the deductibility of interest and charges.".

This section shall become effective one year after the date of enactment.

At the appropriate place in Title II, insert the following:

SEC. ___. DUAL-USE DEBIT CARD.

(a) CONSUMER LIABILITY.—

(1) IN GENERAL.—Section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g) is amended—

(A) by redesignating subsections (b) through (e) as subsections (d) through (g), respectively;

(B) in subsection (a)—

(i) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting appropriately;

(ii) by inserting "CARDS NECESSITATING UNIQUE IDENTIFIER.—

"(1) IN GENERAL.—" after "(a)";

(iii) by striking "other means of access can be identified as the person authorized to use it, such as by signature, photograph," and inserting "other means of access can be identified as the person authorized to use it by a unique identifier, such as a photograph, retina scan,"; and

(iv) by striking "Notwithstanding the foregoing," and inserting the following:

"(2) NOTIFICATION.—Notwithstanding paragraph (1),"; and

(C) by inserting before subsection (d), as so designated by this section, the following new subsections:

"(b) CARDS NOT NECESSITATING UNIQUE IDENTIFIER.—A consumer shall be liable for an unauthorized electronic fund transfer only if—

"(1) the liability is not in excess of $50;

"(2) the unauthorized electronic fund transfer is initiated by the use of a card that has been properly issued to a consumer other than the person making the unauthorized transfer as a means of access to the account of that consumer for the purpose of initiating an electronic fund transfer;

"(3) the unauthorized electronic fund transfer occurs before the card issuer has been notified that an unauthorized use of the card has occurred or may occur as the result of loss, theft, or otherwise; and

"(4) such unauthorized electronic fund transfer did not require the use of a code or other unique identifier (other than a signature), such as a photograph, fingerprint, or retina scan.

"(c) NOTICE OF LIABILITY AND RESPONSIBILITY TO REPORT LOSS OF CARD, CODE, OR OTHER MEANS OF ACCESS.—No consumer shall be liable under this title for any unauthorized electronic fund transfer unless the consumer has received in a timely manner the notice required under section 905(a)(1), and any subsequent notice required under section 905(b) with regard to any change in the information which is the subject of the notice required under section 905(a)(1).".

(2) CONFORMING AMENDMENT.—Section 905(a)(1) of the Electronic Fund Transfer Act (15 U.S.C. 1693c(a)(1)) is amended to read as follows:

"(1) the liability of the consumer for any unauthorized electronic fund transfer and the requirement for promptly reporting any loss, theft, or unauthorized use of a card, code, or other means of access in order to limit the liability of the consumer for any such unauthorized transfer;".

(b) VALIDATION REQUIREMENT FOR DUAL-USE DEBIT CARDS.—

(1) IN GENERAL.—Section 911 of the Electronic Fund Transfer Act (15 U.S.C. 1693i) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

"(c) VALIDATION REQUIREMENT.—No person may issue a card described in subsection (a), the use of which to initiate an electronic fund transfer does not require the use of a code or other unique identifier other than a signature (such as a fingerprint or retina scan), unless—

"(1) the requirements of paragraphs (1) through (4) of subsection (b) are met; and

"(2) the issuer has provided to the consumer a clear and conspicuous disclosure that use of the card may not require the use of such code or other unique identifier.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 911(d) of the Electronic Fund Transfer Act (15 U.S.C. 1993i(d)) (as redesignated by subsection (a)(1) of this section) is amended by striking "For the purpose of subsection (b)" and inserting "For purposes of subsections (b) and (c)".

On page 6, line 23 insert "or United States Trustee" after "trustee".

At the end of Title III:

"If requested by the United States trustee or a trustee serving in the case, the debtor provide a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor and such other personal identifying information relating to the debtor that establishes the identity of the debtor.".

At the appropriate place in title VII, insert the following:

SEC. 7___. ROLLING STOCK EQUIPMENT.

(a) IN GENERAL.—Section 1168 of title 11, United States Code, is amended to read as follows:

"§ 1168. Rolling stock equipment.

"(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court, except that that right to take possession and enforce those other rights and remedies shall be subject to section 362, if—

"(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period;

"(ii) that occurs or becomes an event of default after the date of commencement of the case and before the expiration of such 60-day period is cured before the later of—

"(I) the date that is 30 days after the date of the default or event of the default; or

"(II) the expiration of such 60-day period; and

"(iii) that occurs on or after the expiration of such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract, if cure is permitted under that agreement, lease, or conditional sale contract.

"(2) The equipment described in this paragraph—

"(A) is rolling stock equipment or accessories used on rolling stock equipment, including superstructures or racks, that is subject to a security interest granted by, leased to, or conditionally sold to a debtor; and

"(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, that is to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(2), if at any time after the date of commencement of the case under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession of the trustee.

"(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(2), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

"(d) With respect to equipment first placed in service on or prior to October 22, 1994, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.

"(e) With respect to equipment first placed in service after October 22, 1994, for purposes of this section, the term 'rolling stock equipment' includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.".

(b) AIRCRAFT EQUIPMENT AND VESSELS.—Section 1110 of title 11, United States Code, is amended to read as follows:

"§ 1110. Aircraft equipment and vessels

"(a)(1) Except as provided in paragraph (2) and subject to subsection (b), the right of a secured party with a security interest in equipment described in paragraph (3), or of a lessor or conditional vendor of such equipment, to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies, under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court.

"(2) The right to take possession and to enforce the other rights and remedies described in paragraph (1) shall be subject to section 362 if—

"(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the approval of the court, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of the order is cured before the expiration of such 60-day period;

"(ii) that occurs after the date of the order and before the expiration of such 60-day period is cured before the later of—

"(I) the date that is 30 days after the date of the default; or

"(II) the expiration of such 60-day period; and

"(iii) that occurs on or after the expiration of such 60-day period is cured in compliance with the terms of such security agreement, lease, or conditional sale contract, if a cure is permitted under that agreement, lease, or contract.

"(3) The equipment described in this paragraph—

"(A) is—

"(i) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that, at the time such transaction is entered into, holds an air carrier operating certificate issued pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or

"(ii) a documented vessel (as defined in section 30101(1) of title 46) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that, at the time such transaction is entered into, holds a certificate of public convenience and necessity or permit issued by the Department of Transportation; and

"(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

"(4) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the approval of the court, to extend the 60-day period specified in subsection (a)(1).

"(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(3), if at any time after the date of the order for relief under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession to the trustee.

"(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(3), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

"(d) With respect to equipment first placed in service on or before October 22, 1994, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.".

At the appropriate place in title VII, insert the following:

SEC. 7___. CURBING ABUSIVE FILINGS.

(a) IN GENERAL.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking "or" at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real estate, if the court finds that the filing of the bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors that involved either—

"(A) transfer of all or part ownership of, or other interest in, the real property without the consent of the secured creditor or court approval; or

"(B) multiple bankruptcy filings affecting the real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered pursuant to this subsection shall be binding in any other case under this title purporting to affect the real property filed not later than 2 years after that recording, except that a debtor in a subsequent case may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing.".

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 709, is amended—

(1) in paragraph (24), by striking "or" at the end;

(2) in paragraph (25) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(26) under subsection (a) of this section, of any act to enforce any lien against or security interest in real property following the entry of an order under section 362(d)(4) as to that property in any prior bankruptcy case for a period of 2 years after entry of such an order. The debtor in a subsequent case, however, may move the court for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing; or

"(27) under subsection (a) of this section, of any act to enforce any lien against or security interest in real property—

"(A) if the debtor is ineligible under section 109(g) to be a debtor in a bankruptcy case; or

"(B) if the bankruptcy case was filed in violation of a bankruptcy court order in a prior bankruptcy case prohibiting the debtor from being a debtor in another bankruptcy case.".

At the appropriate place in title VII, insert the following:

SEC. 7___. STUDY OF OPERATION OF TITLE 11 OF THE UNITED STATES CODE WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of the enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses, especially sole proprietorships, to become debtors in cases under title 11 of the United States Code and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and

(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report summarizing that study.

After section 104(b)(3) add a new section 104(b)(4) reading:

"The dollar amount in section 101(18) shall be adjusted at the same times and in the same manner as the dollar amounts in paragraph (1) of this subsection, beginning with the adjustment to be made on April 1, 2001."

In section 101(19)(A) strike: "more than 50 percent of such individual's or such individual and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed" and replace it with:

"Such individual has had or such individual and spouse have had more than 50 percent of her/his/their income from such farming operation in at least one of the three calendar years preceding the year in which the case concerning such individual or such individual or spouse was filed."

After section 1225(b)(2) add a new section 1225(b)(3) reading:

If the plan provides for specific amounts of property to be distributed on account of allowed unsecured claims as required by paragraph (1)(b) of this subsection, those amounts equal or exceed the debtor's projected disposable income for that period, and the plan meets the requirements for confirmation other than those of this subsection, the plan shall be confirmed.

After section 1229(c) add a new section 1229(d) reading:

(1) A modification of the plan under this section may not increase the amount of payments that were due prior to the date of the order modifying the plan;

(2) A modification of the plan under this section to increase payments based on an increase in the debtor's disposable income may not require payments to unsecured creditors in any particular month greater than the debtor's disposable income for that month unless the debtor proposes such a modification;

(3) A modification of the plan in the last year of the plan shall not require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed unless the debtor proposes such a modification.

At the end of the III, insert:

SEC. 2___. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) IN GENERAL.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) by striking "(2)(A) any property" and inserting:

"(3) Property listed in this paragraph is—

"(A) any property";

(ii) in subparagraph (A), by striking "and" at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting "; and"; and

(iv) by adding at the end the following:

"(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.";

(B) by striking paragraph (1) and inserting:

"(2) Property listed in this paragraph is property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (3)(A) of this subsection specifically does not so authorize.";

(C) in the matter preceding paragraph (2)—

(i) by striking "(b)" and inserting "(b)(1)";

(ii) by striking "paragraph (2)" both places it appears and inserting "paragraph (3)";

(iii) by striking "paragraph (1)" each place it appears and inserting "paragraph (2)"; and

(iv) by striking "Such property is—"; and

(D) by adding at the end of the subsection the following:

"(4) For purposes of paragraph (3)(C), the following shall apply:

"(A) If the retirement funds are in a retirement fund that has received or is eligible to receive a favorable determination pursuant to section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the commencement of the case under section 301, 302, or 303, those funds shall be presumed to be exempt from the estate.

"(B) If the retirement funds are in a retirement fund that is not eligible to receive a favorable determination pursuant to such section 7805, those funds shall be presumed to be exempt from the estate if—

"(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

"(ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

"(II) the retirement fund fails to be in substantial compliance with such applicable requirements, the debtor is not materially responsible for that failure.

"(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, pursuant to section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) by reason of that direct transfer.

"(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) by reason of that distribution.

"(ii) A distribution described in this clause is an amount that—

"(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

"(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of that amount."; and

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking "subsection (b)(1)" and inserting "subsection (b)(2)"; and

(B) by adding at the end the following:

"(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.".

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking "or" at the end;

(2) in paragraph (18), by striking the period and inserting "; or";

(3) by inserting after paragraph (18) the following:

"(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, pursuant to the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

"(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan that satisfies the requirements of section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)); or

"(B) in the case of a loan from a thrift savings plan described in subchapter III of title 5, that satisfies the requirements of section 8433(g) of that title."; and

(4) by adding at the end of the flush material following paragraph (19) the following: "Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.".

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by section 202, is amended—

(1) by striking "or" at the end of paragraph (17);

(2) by striking the period at the end of paragraph (18) and inserting "; or"; and

(3) by adding at the end the following:

"(19) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, pursuant to—

"(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)); or

"(B) a loan from the thrift savings plan described in subchapter III of title 5, that satisfies the requirements of section 8433(g) of that title.

Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.".

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

"(f) A plan may not materially alter the terms of a loan described in section 362(b)(19).".

(e) PLAN CONFIRMATION.—Section 1325 of title 11, United States Code, is amended—

(1) in subsection (b)(2), in the matter preceding subparagraph (A), by striking "debtor and" and inserting "debtor (not including income that is withheld from the debtor's wages for the purposes described in section 362(b)(19)) and"; and

(2) in subsection (c), by striking "income to" and inserting "income (except income that is withheld after confirmation of a plan from a debtor's wages for the purposes described in section 362(b)(19)) to".

On page 48, line 15, insert "as amended by section 207(a)" after "Code,".

On page 48, line 17, strike "(b)(2)(A)" and insert "(b)(3)(A)".

On page 48, line 22, strike "subsection (b)(2)(A)" and insert "subsection (b)(3)(A)".

On page 62, line 20, insert ", as amended by section 207(b)," after "362(b) of title 11, United States Code".

On page 62, line 22, strike "(17)" and insert "(18)".

On page 62, line 24, strike "(18)" and insert "(19)".

On page 63, line 1, strike "by adding at the end the following:" and insert "by inserting after paragraph (19) the following:".

On page 63, line 2, strike "(19)" and insert "(20)".

On page 63, line 6, strike "(20)" and insert "(21)".

On page 80, strike lines 4 through 6, and insert the following:

ment;";

(D) in paragraph (20), by striking "or" at the end;

(E) in paragraph (21), by striking the period and inserting "; or";

On page 80, line 7, strike "(E)" and insert "(F)".

On page 80, line 9, strike "(19)" and insert (22)".

On page 80, line 21, strike "(19)" and insert (22)".

On page 131, line 3, strike "section 326" and insert "sections 326 and 401".

On page 50, line 7-8 strike "chief judge" and insert "United States Trustee or Bankruptcy Administrator".

On page 50, line 10, after "not" insert "reasonably".

On page 50, line 14, strike "chief judge" and insert "United States Trustee or Bankruptcy Administrator".

On page 50, line 16, strike "180 days" and insert "one year".

On page 50, line 17-18, strike "180 days" and insert "one year".

In Section 312, in amended section 707(c)(3), strike "20" and replace with "50".

At the appropriate place in title IV, insert the following:

SEC. 4 . FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking "dwelling" the first place it appears;

(2) by striking "ownership or" and inserting "ownership,";

(3) by striking "housing" the first place it appears; and

(4) by striking "but only" and all that follows through "such period,", and inserting "or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,".

At the appropriate place, insert the following new section:

Sec. . ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) AMENDMENTS TO THE TRUTH IN LENDING ACT.—

(1) ENHANCED DISCLOSURE OF REPAYMENT TERMS.—

(A) IN GENERAL.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

"(11)(A) Repayment information that would apply to the outstanding balance of the consumer under the credit plan in a clear and conspicuous manner, including—

"(i) the required minimum monthly payment on that balance, represented as both a dollar figure and as a percentage of that balance,

"(ii) the number of months (rounded to the nearest month) that it would take to pay the entire amount of that balance, if the consumer pays only the required minimum monthly payments and if no further advances are made;

"(iii) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made.

(B) PUBLICATION OF MODEL FORMS.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall publish model disclosure forms in accordance with section 195 of the Truth in Lending Act for the purpose of compliance with section 127(b)(II) of the Truth in Lending Act, as added by this paragraph.

(2) ENHANCED DISCLOSURES IN CONNECTION WITH SOLICITATIONS.—

(A) IN GENERAL.—Section 127(c)(I)(B) of the Truth in Lending Act (15 U.S.C. 1637(c)(1)(B))

is amended by adding at the end the following:

"(iv) CREDIT WORKSHEET.—An easily understandable worksheet designed to aid consumers in determining their ability to assume more debt, including consideration of the personal expenses of the consumer and a simple formula for the consumer to determine whether the assumption of additional debt is advisable.

"(v) BASIS OF PREAPPROVAL.—In any case in which the application or solicitation states that the consumer has been preapproved for an account under an open end consumer credit plan, the following statement clearly and conspicuously: "Your pre-approval for this credit card does not mean that we have reviewed your individual financial circumstances. You should review your own budget before accepting this offer of credit.".

"(vi) AVAILABILITY OF CREDIT REPORTS.—That the consumer is entitled to a copy of his or her credit report, in accordance with the Fair Credit Reporting Act.".

(B) PUBLICATION OF MODEL FORM.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall publish worksheet forms in accordance with section 195 on the Truth in Lending Act for the purpose of compliance with section 127(c)(1)(B)(1v) of the Truth in Lending Act, as added by this paragraph. This section shall be effective no later than January 1, 2001.

Strike section 307 and insert:

SEC. 307. AUDIT PROCEDURES.

(a) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), as amended by section 301 of this Act, by striking paragraph (6) and inserting the following:

"(6) make such reports as the Attorney General directs, including the results of audits performed under subsection (f); and"; and

(2) by adding at the end the following: "(f)(1)(A) The Attorney General shall establish procedures to determine the accuracy and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title.

Those procedures shall—

"(i) establish a method of selecting appropriate qualified persons to contract to perform those audits;

"(ii) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 500 cases in each Federal judicial district shall be selected for audit;

"(iii) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed; and

"(iv) establish procedures for—

providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

"(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1).

(A) The report of each audit conducted under this subsection shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case where a material misstatement of income or expenditures or of assets has been reported, the clerk of the bankruptcy court shall give notice of the misstatement to the creditors in the case.

"(B) If a material misstatement of income or expenditures or of assets is reported the United States trustee shall—

"(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18, United States Code;

"(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11, United States Code.

(b) AMENDMENTS.—Section 521 of title 11, United States Code is amended in subsections (3) and (4) by adding "or an auditor appointed pursuant to section 586 of title 28, United States Code" after "serving in the case."

(c) AMENDMENTS.—Section 727(d) of title II, United States Code is amended—

(1) By deleting "or" at the end of paragraph (2);

(2) By substituting "; or" for the period at the end of paragraph (3); and

(3) Adding the following at the end of paragraph (3)—

"(4) the debtor has failed to explain satisfactorily—

"(A) a material misstatement in an audit performed pursuant to section 586(f) of title 28, United States Code; or

"(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files and all other papers, things, or property belonging to the debtor that are requested for an audit conducted pursuant to section 586(f) of title 28, United States Code.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

In section 102, in the new section 707(j)(2)(A), strike "20" and replace with "30".

At the appropriate place in title II, insert the following:

SEC. 2 . VIOLATIONS OF THE AUTOMATIC STAY

(a) Sec. 362(a) is amended by adding after subsection (8) the following:

"(9) any communication threatening a debtor, at any time after the commitment and before the granting of a discharge in a case under this title, an intention to file a motion to determine the dischargeability of a debt, or to file a motion under 11 U.S.C. Section 707(b) to dismiss or convert a case, or to repossess collateral from the debtor to which the stay applies."

At the appropriate place in title II, insert the following:

SEC. 2 . DISCOURAGING ABUSIVE REAFFIRMATION PRACTICES.

Sec. 524 of title 11, United States Code, is amended—

(1) in subsection (c)(2)(B) by adding at the end the following:

"(C) such agreement contains a clear and conspicuous statement which advises the debtor what portion of the debt to be reaffirmed is attributable to principal, interest, late fees, creditor's attorneys fees, expenses or other costs relating to the collection of the debt."

(2) in subsection (c)(6)(B), by inserting after "real property" the following: "or is a debt described in subsection (c)(7)."

(7) in a case concerning an individual, if the consideration for such agreement is based in whole or in part on an unsecured consumer debt, or is based in whole or in part upon a debt for an item of personalty the value of which at point of purchase was $250 or less, and in which the creditor asserts a purchase money security interest, the court approves such agreement as—

(i) in the best interest of the debtor in light of the debtor's income and expenses;

(ii) not imposing an undue hardship on the debtor's future ability of the debtor to pay for the needs of children and other dependents (including court ordered support);

(iii) not requiring the debtor to pay the creditor's attorney's fees, expenses or other costs relating to the collection of the debt;

(iv) not entered into to protect property that is necessary for the care and maintenance of children or other dependents that would have nominal value on repossession;

(v) not entered into after coercive threats or actions by the creditor in the creditor's course of dealings with the debtor.

(3) in subsection (d)(2) by adding after "subsections (c)(6)" "and (c)(7)", and after "of this section," by striking "if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor" and adding at the end: "as applicable;"

At the appropriate place insert the following:

SEC. . ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) AMENDMENTS TO THE TRUTH IN LENDING ACT.—

(1) ENHANCED DISCLOSURE OF REPAYMENT TERMS.—

(A) IN GENERAL.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

"(11)(A) In a clear and conspicuous manner, repayment information that would apply to the outstanding balance of the consumer under the credit plan, including—

"(i) the required minimum monthly payment on that balance, represented as both a dollar figure and a percentage of that balance;

"(ii) the number of months (rounded to the nearest month) that it would take to pay the entire amount of that current balance if the consumer pays only the required minimum monthly payments and if no further advances are made; and

"(iii) the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays only the required minimum monthly payments and if no further advances are made.

"(B) In making the disclosures under subparagraph (A) the creditor shall apply the annual interest rate that applies to that balance with respect to the current billing cycle for that consumer in effect on the date on which the disclosure is made.

(B) PUBLICATION OF MODEL FORMS.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall publish model disclosure forms in accordance with Section 195 of the Truth in Lending Act for the purpose of compliance with section 127(b)(11) of the Truth in Lending Act, as added by this paragraph.

(C) CIVIL LIABILITY.—Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended, in the undesignated paragraph following paragraph (4), by striking the second sentence and inserting the following: "In connection with the disclosures referred to

in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635, 1637(a), or of paragraphs (4), (5), (6), (7), (8), (9), (10), or (11) of section 1637(b) or for failing to comply with disclosure requirements under State law for any term or item that the Board has determined to be substantially the same in meaning under section 1610(a)(2) as any of the terms or items referred to in section 1637(a), paragraph (4), (5), (6), (7), (8), (9), (10), or (11) of section 1637(b) of this title."

(2) DISCLOSURES IN CONNECTION WITH SOLICITATIONS.—

(A) IN GENERAL.—Section 127(c)(1)(B) of the Truth in Lending Act (15 U.S.C. 1637(c)(1)(B) is amended by adding the following:

"(iv) CREDIT WORKSHEET.—An easily understandable credit worksheet designed to aid consumers in determining their ability to assume more debt, including consideration of the personal expenses of the consumer and a simple formula for the consumer to determine whether the assumption of additional debt is advisable.

(v) BASIS OF PREAPPROVAL.—In any case in which the application or solicitation states that the consumer has been preapproved for an account under an open end consumer credit plan, the following statement clearly and conspicuously: "Your pre-approval for this credit card does not mean that we have reviewed your individual financial circumstances. You should review your own budget before accepting this offer of credit."

(vi) AVAILABILITY OF CREDIT REPORT.—That the consumer is entitled to a copy of his or her credit report, in accordance with the Fair Credit Reporting Act."

(B) PUBLICATION OF MODEL FORMS.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall publish model disclosure forms in accordance with Section 195 of the Truth in Lending Act for the purpose of compliance with section 127(c)(1)(B) of the Truth in Lending Act, as amended by this paragraph.

(b) EFFECTIVE DATE.—The provisions of this section shall become effective on January 1, 2001.

Insert at an appropriate place:

Amend 11 U.S.C. Section 1325(6)(a), insert, after "received by the debtor," "(other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable non-bankruptcy law and which is reasonably necessary (to be expended)".

Insert at an appropriate place:

11 U.S.C. 507(a) to add a new section 507(a)(10) to read:

"Tenth, allowed claims for injuries resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug or another substance."

In 523(a)(9), insert "or vessel" after "vehicle".

Strike sections 323 through 329 and insert the following:

SEC. 323. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

Section 101 of title 11, United States Code, as amended by section 321(g) of this Act, is amended—

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

"(14A) 'domestic support obligation' means a debt (that accrues before or after the entry of an order for relief under this title) that is—

"(A) owed to or recoverable by—

"(i) a spouse, former spouse, or child of the debtor or that child's legal guardian; or

"(ii) a governmental unit;

"(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child, without regard to whether such debt is expressly so designated;

"(C) established or subject to establishment before or after entry of an order for relief under this title, by reason of applicable provisions of—

"(i) a separation agreement, divorce decree, or property settlement agreement;

"(ii) an order of a court of record; or

"(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

"(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt.".

SEC. 324. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

Section 507(a) of title 11, United States Code, is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as redesignated, by striking "First" and inserting "Second";

(4) in paragraph (3), as redesignated, by striking "Second" and inserting "Third";

(5) in paragraph (4), as redesignated, by striking "Third" and inserting "Fourth";

(6) in paragraph (5), as redesignated, by striking "Fourth" and inserting "Fifth";

(7) in paragraph (6), as redesignated, by striking "Fifth" and inserting "Sixth";

(8) in paragraph (7), as redesignated, by striking "Sixth" and inserting "Seventh"; and

(9) by inserting before paragraph (2), as redesignated, the following:

"(1) First, allowed claims for domestic support obligations to be paid in the following order on the condition that funds received under this paragraph by a governmental unit in a case under this title be applied:

"(A) Claims that, as of the date of entry of the order for relief, are owed directly to a spouse, former spouse, or child of the debtor, or the parent of such child, without regard to whether the claim is filed by the spouse, former spouse, child, or parent, or is filed by a governmental unit on behalf of that person.

"(B) Claims that, as of the date of entry of the order for relief, are assigned by a spouse, former spouse, child of the debtor, or the parent of that child to a governmental unit or are owed directly to a governmental unit under applicable nonbankruptcy law.".

SEC. 325. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended—

(1) in section 1129(a), by adding at the end the following:

"(14) If the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that become payable after the date on which the petition is filed.";

(2) in section 1325(a)—

(A) in paragraph (5), by striking "and" at the end;

(B) in paragraph (6), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(7) if the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order for such obligation that become payable after the date on which the petition is filed."; and

(3) in section 1328(a), as amended by section 314 of this Act, in the matter preceding paragraph (1), by inserting ", and with respect to a debtor who is required by a judicial or administrative order to pay a domestic support obligation, certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before or after the petition was filed) have been paid" after "completion by the debtor of all payments under the plan".

SEC. 326. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

"(2) under subsection (a)—

"(A) of the commencement or continuation of an action or proceeding for—

"(i) the establishment of paternity as a part of an effort to collect domestic support obligations; or

"(ii) the establishment or modification of an order for domestic support obligations; or

"(B) the collection of a domestic support obligation from property that is not property of the estate;";

(2) in paragraph (17), by striking "or" at the end;

(3) in paragraph (18), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

"(19) under subsection (a) with respect to the withholding of income pursuant to an order as specified in section 466(b) of the Social Security Act (42 U.S.C. 666(b)); or

"(20) under subsection (a) with respect to—

"(A) the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses pursuant to State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C. 666(a)(16)) or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7));

"(B) the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act (42 U.S.C. 664 and 666(a)(3)); or

"(C) the enforcement of medical obligations as specified under title IV of the Social Security Act (42 U.S.C. 601 et seq.).".

SEC. 327. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

(a) IN GENERAL.—Section 523 of title 11, United States Code, as amended by section 202 of this Act, is amended—

(1) in subsection (a), by striking paragraph (5) and inserting the following:

"(5) for a domestic support obligation;";

(2) in subsection (c), by striking "(6), or (15)" and inserting "or (6)"; and

(3) in paragraph (15), by striking "governmental unit" and all through the end of the paragraph and inserting a semicolon.

SEC. 328. CONTINUED LIABILITY OF PROPERTY.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (c), by striking paragraph (1) and inserting the following:

"(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable bankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5);"; and

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting "of a kind that is specified in section 523(a)(5); or".

SEC. 329. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

"(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation; or".

SEC. 709. AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, as amended by section 326 of this Act, is amended—

(1) in paragraph (21), by striking "or" at the end;

(2) in paragraph (22), by striking the period at the end and inserting a semicolon; and

(3) by inserting after paragraph (22) the following:

"(23) under subsection (a) of this section of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

"(24) under subsection (a)(3) of this section, of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement and the debtor has not paid rent to the lessor pursuant to the terms of the lease agreement or applicable state law after the commencement and during the course of the case; or

"(25) under subsection (a)(3) of this section, of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement that has terminated pursuant to the lease agreement or applicable State law.".

(26) under subsection (a)(3) of this section, of any eviction, unlawful detainer action, or similiar proceeding, if the debtor has previously filed within the last year and failed to pay post-petition rent during the course of that case.

(27) under subsection (a)(3) of this section, of eviction actions based on endangerment to property or person or the use of illegal drugs.

At the appropriate place in title VII, insert the following:

SEC. 7___. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended—

(1) by striking "only" and all that follows through the end of the subsection and inserting "only—

"(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

"(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362".

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

"(14) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.".

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, is amended by adding at the end the following:

"(e) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.".

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, except that the court shall not confirm a plan under Chapter 11 of this title without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the state in which the debtor is incorporated, was formed, or does business.

REED AMENDMENT NO. 3596

Mr. REED proposed an amendment to amendment No. 3559 proposed by Mr. GRASSLEY to the bill (S. 1301) to amend title 11, United States Code, to provide for consumer bankruptcy protection, and for other purposes; as follows:

At the appropriate place in title IV, insert the following:

SEC. 4___. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

Section 106 of the Truth in Lending Act (15 U.S.C. 1605) is amended by adding at the end the following:

"(g) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor may not, solely because a consumer has not incurred finance charges in connection with an extension of credit—

"(1) refuse to renew or continue to offer the extension of credit to that consumer; or

"(2) charge a fee to that consumer in lieu of a finance charge.".

D'AMATO (AND OTHERS) AMENDMENT NO. 3597

Mr. D'AMATO (for himself, Mr. CHAFEE, Mr. DODD, Mr. BRYAN, Ms. MOSELEY-BRAUN, and Mrs. BOXER) proposed an amendment to amendment No. 3559 proposed by Mr. GRASSLEY to the bill, S. 1301, supra; as follows:

At the appropriate place, insert the following new section:

SEC. ___. PROHIBITION OF CERTAIN ATM FEES.

(a) DEFINITION.—Section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693a) is amended—

(1) in paragraph (10), by striking "and" at the end;

(2) in paragraph (11), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(12) the term 'electronic terminal surcharge' means a transaction fee assessed by a financial institution that is the owner or operator of the electronic terminal; and

"(13) the term 'electronic banking network' means a communications system linking financial institutions through electronic terminals.".

(b) CERTAIN FEES PROHIBITED.—Section 905 of the Electronic Fund Transfer Act (12 U.S.C. 1693c) is amended by adding at the end the following new subsection:

"(d) LIMITATION ON FEES.—With respect to a transaction conducted at an electronic terminal, an electronic terminal surcharge may not be assessed against a consumer if the transaction—

"(1) does not relate to or affect an account held by the consumer with the financial institution that is the owner or operator of the electronic terminal; and

"(2) is conducted through a national or regional electronic banking network.".

DODD AMENDMENT NO. 3598

Mr. DODD proposed an amendment to amendment No. 3559 proposed by Mr. GRASSLEY to the bill, S. 1301, supra; as follows:

At the appropriate place, insert the following new section:

SEC. ___. EXTENSIONS OF CREDIT TO UNDERAGE CONSUMERS.

(a) IN GENERAL.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following:

"(5) APPLICATIONS FROM UNDERAGE CONSUMERS.—

"(A) PROHIBITION ON ISSUANCE.—No credit card may be issued to, or open end credit plan established on behalf of, a consumer who has not reached the age of 21 unless the consumer has submitted a written application to the card issuer that meets the requirements of subparagraph (B).

"(B) APPLICATION REQUIREMENTS.—An application to open a credit card account by an individual who has not reached the age of 21 as of the date of submission of the application shall require—

"(i) the signature of the parent or guardian of the consumer indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has reached the age of 21; or

"(ii) submission by the consumer of financial information indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.".

(b) REGULATORY AUTHORITY.—The Board of Governors of the Federal Reserve System may issue such rules or publish such model forms as it considers necessary to carry out section 127(c)(5) of the Truth in Lending Act, as amended by this section.

KOHL AMENDMENT NO. 3599

Mr. KOHL proposed an amendment to amendment No. 3559 proposed by Mr. GRASSLEY to the bill, S. 1301, supra; as follows:

At the appropriate place, insert the following new section:

SEC. ___. SENSE OF THE SENATE REGARDING THE HOMESTEAD EXEMPTION.

(a) FINDINGS.—The Senate finds that—

(1) one of the most flagrant abuses of the bankruptcy system involves misuse of the

homestead exemption, which allows a debtor to exempt his or her home, up to a certain value, as established by State law, from being sold off to satisfy debts;

(2) while the vast majority of States responsibly cap the exemption at not more than $40,000, 5 States exempt homes regardless of their value;

(3) in the few States with unlimited homestead exemptions, debtors can shield their assets in luxury homes while legitimate creditors get little or nothing;

(4) beneficiaries of the homestead exemption include convicted insider traders and savings and loan criminals, while short-changed creditors include children, spouses, governments, and banks; and

(5) the homestead exemption should be capped at $100,000 to prevent such high-profile abuses.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) meaningful bankruptcy reform cannot be achieved without capping the homestead exemption; and

(2) bankruptcy reform legislation should include a cap of $100,000 on the homestead exemption to the bankruptcy laws.

HATCH (AND OTHERS) AMENDMENT NO. 3600

Mr. HATCH (for himself, Mr. GRAHAM, Mr. DURBIN, and Mr. GRASSLEY) proposed an amendment to amendment No. 3559 proposed by Mr. GRASSLEY to the bill, S. 1301, supra; as follows:

On page 60, after line 22, insert the following:

SEC. 2___. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) IN GENERAL.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) by striking "(2)(A) any property" and inserting:

"(3) Property listed in this paragraph is—

"(A) any property";

(ii) in subparagraph (A), by striking "and" at the end;

(iii) in subparagraph (B), by striking the period at the end and inserting "; and"; and

(iv) by adding at the end the following:

"(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 and which has not been pledged or promised to any person in connection with any extension of credit.";

(B) by striking paragraph (1) and inserting:

"(2) Property listed in this paragraph is property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (3)(A) of this subsection specifically does not so authorize.";

(C) in the matter preceding paragraph (2)—

(i) by striking "(b)" and inserting "(b)(1)";

(ii) by striking "paragraph (2)" both places it appears and inserting "paragraph (3)";

(iii) by striking "paragraph (1)" each place it appears and inserting "paragraph (2)"; and

(iv) by striking "Such property is—"; and

(D) by adding at the end of the subsection the following:

"(4) For purposes of paragraph (3)(C), the following shall apply:

"(A) If the retirement funds are in a retirement fund that has received a favorable determination pursuant to section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the commencement of the case under section 301, 302, or 303, those funds shall be presumed to be exempt from the estate.

"(B) If the retirement funds are in a retirement fund that has not received a favorable determination pursuant to such section 7805, those funds are to be exempt from the estate if the debtor demonstrates that—

"(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

"(ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

"(II) the retirement fund fails to be in substantial compliance with such applicable requirements, the debtor is not materially responsible for that failure.

"(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, pursuant to section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) by reason of that direct transfer.

"(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) by reason of that distribution.

"(ii) A distribution described in this clause is an amount that—

"(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

"(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of that amount."; and

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking "subsection (b)(1)" and inserting "subsection (b)(2)"; and

(B) by adding at the end the following:

"(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.".

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking "or" at the end;

(2) in paragraph (18), by striking the period and inserting "; or";

(3) by inserting after paragraph (18) the following:

"(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, pursuant to the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

"(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan that satisfies the requirements of section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)); or

"(B) in the case of a loan from a thrift savings plan described in subchapter III of title 5, that satisfies the requirements of section 8433(g) of that title."; and

(4) by adding at the end of the flush material following paragraph (19) the following: "Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.".

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by section 202, is amended—

(1) by striking "or" at the end of paragraph (17);

(2) by striking the period at the end of paragraph (18) and inserting "; or"; and

(3) by adding at the end the following:

"(19) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, pursuant to—

"(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)(1)); or

"(B) a loan from the thrift savings plan described in subchapter III of title 5, that satisfies the requirements of section 8433(g) of that title.

Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.".

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

"(f) A plan may not materially alter the terms of a loan described in section 362(b)(19).".

On page 48, line 15, insert "as amended by section 207(a)" after "Code,".

On page 48, line 17, strike "(b)(2)(A)" and insert "(b)(3)(A)".

On page 48, line 22, strike "subsection (b)(2)(A)" and insert "subsection (b)(3)(A)".

On page 62, line 20, insert ", as amended by section 207(b)," after "362(b) of title 11, United States Code".

On page 62, line 22, strike "(17)" and insert "(18)".

On page 62, line 24, strike "(18)" and insert "(19)".

On page 63, line 1, strike "by adding at the end the following:" and insert "by inserting after paragraph (19) the following:".

On page 63, line 2, strike "(19)" and insert "(20)".

On page 63, line 6, strike "(20)" and insert "(21)".

On page 80, strike lines 4 through 6, and insert the following:

ment;";

(D) in paragraph (20), by striking "or" at the end;

(E) in paragraph (21), by striking the period and inserting "; or";

On page 80, line 7, strike "(E)" and insert "(F)".

On page 80, line 9, strike "(19)" and insert (22)".

On page 80, line 21, strike "(19)" and insert (22)".

On page 131, line 3, strike "section 326" and insert "sections 326 and 401".

TRADEMARK LAW TREATY IMPLEMENTATION ACT

HATCH AMENDMENT NO. 3601

Mr. SANTORUM (for Mr. HATCH) proposed an amendment to the bill (S. 2193) to implement the provisions of the Trademark Law Treaty; as follows:

Strike all after the enacting clause and insert the following:

TITLE I—TRADEMARK LAW TREATY IMPLEMENTATION

SEC. 101. SHORT TITLE.

This title may be cited as the "Trademark Law Treaty Implementation Act".

SEC. 102. REFERENCE TO THE TRADEMARK ACT OF 1946.

For purposes of this title, the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1051 et seq.), shall be referred to as the "Trademark Act of 1946".

SEC. 103. APPLICATION FOR REGISTRATION; VERIFICATION.

(a) APPLICATION FOR USE OF TRADEMARK.—Section 1(a) of the Trademark Act of 1946 (15 U.S.C. 1051(a)) is amended to read as follows:

"SECTION 1. (a)(1) The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Commissioner, and such number of specimens or facsimiles of the mark as used as may be required by the Commissioner.

"(2) The application shall include specification of the applicant's domicile and citizenship, the date of the applicant's first use of the mark, the date of the applicant's first use of the mark in commerce, the goods in connection with which the mark is used, and a drawing of the mark.

"(3) The statement shall be verified by the applicant and specify that—

"(A) the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be the owner of the mark sought to be registered;

"(B) to the best of the verifier's knowledge and belief, the facts recited in the application are accurate;

"(C) the mark is in use in commerce; and

"(D) to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive, except that, in the case of every application claiming concurrent use, the applicant shall—

"(i) state exceptions to the claim of exclusive use; and

"(ii) shall specify, to the extent of the verifier's knowledge—

"(I) any concurrent use by others;

"(II) the goods on or in connection with which and the areas in which each concurrent use exists;

"(III) the periods of each use; and

"(IV) the goods and area for which the applicant desires registration.

"(4) The applicant shall comply with such rules or regulations as may be prescribed by the Commissioner. The Commissioner shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.".

(b) APPLICATION FOR BONA FIDE INTENTION TO USE TRADEMARK.—Subsection (b) of section 1 of the Trademark Act of 1946 (15 U.S.C. 1051(b)) is amended to read as follows:

"(b)(1) A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Commissioner.

"(2) The application shall include specification of the applicant's domicile and citizenship, the goods in connection with which the applicant has a bona fide intention to use the mark, and a drawing of the mark.

"(3) The statement shall be verified by the applicant and specify—

"(A) that the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be entitled to use the mark in commerce;

"(B) the applicant's bona fide intention to use the mark in commerce;

"(C) that, to the best of the verifier's knowledge and belief, the facts recited in the application are accurate; and

"(D) that, to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.

Except for applications filed pursuant to section 44, no mark shall be registered until the applicant has met the requirements of subsections (c) and (d) of this section.

"(4) The applicant shall comply with such rules or regulations as may be prescribed by the Commissioner. The Commissioner shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.".

(c) CONSEQUENCE OF DELAYS.—Paragraph (4) of section 1(d) of the Trademark Act of 1946 (15 U.S.C. 1051(d)(4)) is amended to read as follows:

"(4) The failure to timely file a verified statement of use under paragraph (1) or an extension request under paragraph (2) shall result in abandonment of the application, unless it can be shown to the satisfaction of the Commissioner that the delay in responding was unintentional, in which case the time for filing may be extended, but for a period not to exceed the period specified in paragraphs (1) and (2) for filing a statement of use.".

SEC. 104. REVIVAL OF ABANDONED APPLICATION.

Section 12(b) of the Trademark Act of 1946 (15 U.S.C. 1062(b)) is amended in the last sentence by striking "unavoidable" and by inserting "unintentional".

SEC. 105. DURATION OF REGISTRATION; CANCELLATION; AFFIDAVIT OF CONTINUED USE; NOTICE OF COMMISSIONER'S ACTION.

Section 8 of the Trademark Act of 1946 (15 U.S.C. 1058) is amended to read as follows:

"DURATION

"SEC. 8. (a) Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Commissioner for failure to comply with the provisions of subsection (b) of this section, upon the expiration of the following time periods, as applicable:

"(1) For registrations issued pursuant to the provisions of this Act, at the end of 6 years following the date of registration.

"(2) For registrations published under the provisions of section 12(c), at the end of 6 years following the date of publication under such section.

"(3) For all registrations, at the end of each successive 10-year period following the date of registration.

"(b) During the 1-year period immediately preceding the end of the applicable time period set forth in subsection (a), the owner of the registration shall pay the prescribed fee and file in the Patent and Trademark Office—

"(1) an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and such number of specimens or facsimiles showing current use of the mark as may be required by the Commissioner; or

"(2) an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is not in use in commerce and showing that any such nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

"(c)(1) The owner of the registration may make the submissions required under this section within a grace period of 6 months after the end of the applicable time period set forth in subsection (a). Such submission is required to be accompanied by a surcharge prescribed by the Commissioner.

"(2) If any submission filed under this section is deficient, the deficiency may be corrected after the statutory time period and within the time prescribed after notification of the deficiency. Such submission is required to be accompanied by a surcharge prescribed by the Commissioner.

"(d) Special notice of the requirement for affidavits under this section shall be attached to each certificate of registration and notice of publication under section 12(c).

"(e) The Commissioner shall notify any owner who files 1 of the affidavits required by this section of the Commissioner's acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

"(f) If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.".

SEC. 106. RENEWAL OF REGISTRATION.

Section 9 of the Trademark Act of 1946 (15 U.S.C. 1059) is amended to read as follows:

"RENEWAL OF REGISTRATION

"SEC. 9. (a) Subject to the provisions of section 8, each registration may be renewed for periods of 10 years at the end of each successive 10-year period following the date of registration upon payment of the prescribed fee and the filing of a written application, in such form as may be prescribed by the Commissioner. Such application may be made at

any time within 1 year before the end of each successive 10-year period for which the registration was issued or renewed, or it may be made within a grace period of 6 months after the end of each successive 10-year period, upon payment of a fee and surcharge prescribed therefor. If any application filed under this section is deficient, the deficiency may be corrected within the time prescribed after notification of the deficiency, upon payment of a surcharge prescribed therefor.

"(b) If the Commissioner refuses to renew the registration, the Commissioner shall notify the registrant of the Commissioner's refusal and the reasons therefor.

"(c) If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.".

SEC. 107. RECORDING ASSIGNMENT OF MARK.

Section 10 of the Trademark Act of 1946 (15 U.S.C. 1060) is amended to read as follows:

"ASSIGNMENT

"SEC. 10. (a) A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Notwithstanding the preceding sentence, no application to register a mark under section 1(b) shall be assignable prior to the filing of an amendment under section 1(c) to bring the application into conformity with section 1(a) or the filing of the verified statement of use under section 1(d), except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. In any assignment authorized by this section, it shall not be necessary to include the good will of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted. Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment, and when the prescribed information reporting the assignment is recorded in the Patent and Trademark Office, the record shall be prima facie evidence of execution. An assignment shall be void against any subsequent purchaser for valuable consideration without notice, unless the prescribed information reporting the assignment is recorded in the Patent and Trademark Office within 3 months after the date of the subsequent purchase or prior to the subsequent purchase. The Patent and Trademark Office shall maintain a record of information on assignments, in such form as may be prescribed by the Commissioner.

"(b) An assignee not domiciled in the United States shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.".

SEC. 108. INTERNATIONAL CONVENTIONS; COPY OF FOREIGN REGISTRATION.

Section 44 of the Trademark Act of 1946 (15 U.S.C. 1126) is amended—

(1) in subsection (d)—

(A) by striking "23, or 44(e) of this Act" and inserting "or 23 of this Act or under subsection (e) of this section"; and

(B) in paragraphs (3) and (4) by striking "this subsection (d)" and inserting "this subsection"; and

(2) in subsection (e), by striking the second sentence and inserting the following: "Such applicant shall submit, within such time period as may be prescribed by the Commissioner, a certification or a certified copy of the registration in the country of origin of the applicant.".

SEC. 109. TRANSITION PROVISIONS.

(a) REGISTRATIONS IN 20-YEAR TERM.—The provisions of section 8 of the Trademark Act of 1946, as amended by section 105 of this Act, shall apply to a registration for trademark issued or renewed for a 20-year term, if the expiration date of the registration is on or after the effective date of this Act.

(b) APPLICATIONS FOR REGISTRATION.—This title and the amendments made by this title shall apply to any application for registration of a trademark pending on, or filed on or after, the effective date of this Act.

(c) AFFIDAVITS.—The provisions of section 8 of the Trademark Act of 1946, as amended by section 105 of this Act, shall apply to the filing of an affidavit if the sixth or tenth anniversary of the registration, or the sixth anniversary of publication of the registration under section 12(c) of the Trademark Act of 1946, for which the affidavit is filed is on or after the effective date of this Act.

(d) RENEWAL APPLICATIONS.—The amendment made by section 106 shall apply to the filing of an application for renewal of a registration if the expiration date of the registration for which the renewal application is filed is on or after the effective date of this Act.

SEC. 110. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect—

(1) on the date that is 1 year after the date of the enactment of this Act, or

(2) upon the entry into force of the Trademark Law Treaty with respect to the United States,

whichever occurs first.

TITLE II—TECHNICAL CORRECTIONS

SEC. 201. TECHNICAL CORRECTIONS TO TRADEMARK ACT OF 1946.

(a) IN GENERAL.—The Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946), is amended as follows:

(1) Section 1(d)(1) (15 U.S.C. 1051(d)(1)) is amended—

(A) by inserting "and," after "specifying the date of the applicant's first use of the mark in commerce"; and

(B) by striking "and, the mode or manner in which the mark is used on or in connection with such goods or services".

(2) Section 2 (15 U.S.C. 1052) is amended—

(A) in subsection (e)—

(i) in paragraph (3) by striking "or" after "them,"; and

(ii) by inserting before the period at the end the following: ", or (5) comprises any matter that, as a whole, is functional"; and

(B) in subsection (f), by striking "paragraphs (a), (b), (c), (d), and (e)(3)" and inserting "subsections (a), (b), (c), (d), (e)(3), and (e)(5)".

(3) Section 7(a) (15 U.S.C. 1057(a)) is amended in the first sentence by striking the second period at the end.

(4) Section 14(3) (15 U.S.C. 1064(3)) is amended by inserting "or is functional," before "or has been abandoned".

(5) Section 23(c) (15 U.S.C. 1091(c)) is amended by striking "or device" and inserting ", device, any matter that as a whole is not functional,".

(6) Section 26 (15 U.S.C. 1094) is amended by striking "7(c),," and inserting ", 7(c),".

(7) Section 31 (15 U.S.C. 1113) is amended—

(A) by striking—

"§ 31. Fees";

and

(B) by striking "(a)" and inserting "SEC. 31. (a)".

(8) Section 32(1) (15 U.S.C. 1114(1)) is amended by striking "As used in this subsection" and inserting "As used in this paragraph".

(9) Section 33(b) (15 U.S.C. 1115(b)) is amended—

(A) by redesignating paragraph (8) as paragraph (9); and

(B) by inserting after paragraph (7) the following:

"(8) That the mark is functional; or".

(10) Section 39(a) (15 U.S.C. 1121(a)) is amended by striking "circuit courts" and inserting "courts".

(11) Section 42 (15 U.S.C. 1124) is amended by striking "the any domestic" and inserting "any domestic".

(12) The Act is amended by striking "trademark" each place it appears in the text and the title and inserting "trademark".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act, and shall apply only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. USE OF CERTIFICATION MARKS FOR ADVERTISING OR PROMOTIONAL PURPOSES.

Section 14 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1064) (commonly referred to as the Trademark Act of 1946) is amended by adding at the end the following: "Nothing in paragraph (5) shall be deemed to prohibit the registrant from using its certification mark in advertising or promoting recognition of the certification program or of the goods or services meeting the certification standards of the registrant. Such uses of the certification mark shall not be grounds for cancellation under paragraph (5), so long as the registrant does not itself produce, manufacture, or sell any of the certified goods or services to which its identical certification mark is applied.".

SEC. 302. OFFICIAL INSIGNIA OF NATIVE INDIAN TRIBES.

(a) IN GENERAL.—The Commissioner of Patents and Trademarks shall study the

issues surrounding the protection of the official insignia of federally and State recognized Native American tribes. The study shall address at least the following issues:

(1) The impact on Native American tribes, trademark owners, the Patent and Trademark Office, any other interested party, or the international legal obligations of the United States, of any change in law or policy with respect to—

(A) the prohibition of the Federal registration of trademarks identical to the official insignia of Native American tribes;

(B) the prohibition of any new use of the official insignia of Native American tribes; and

(C) appropriate defenses, including fair use, to any claims of infringement.

(2) The means for establishing and maintaining a listing of the official insignia of federally or State recognized Native American tribes.

(3) An acceptable definition of the term "official insignia" with respect to a federally or State recognized Native American tribe.

(4) The administrative feasibility, including the cost, of changing the current law or policy to—

(A) prohibit the registration, or prohibit any new uses of the official insignia of State or federally recognized Native American tribes; or

(B) otherwise give additional protection to the official insignia of federally and State recognized Native American tribes.

(5) A determination of whether such protection should be offered prospectively or retrospectively and the impact of such protection.

(6) Any statutory changes that would be necessary in order to provide such protection.

(7) Any other factors which may be relevant.

(b) COMMENT AND REPORT.—

(1) COMMENT.—Not later than 60 days after the date of enactment of this Act, the Commissioner shall initiate a request for public comment on the issues identified and studied by the Commissioner under subsection (a) and invite comment on any additional issues that are not included in such request. During the course of the public comment period, the Commissioner shall use any appropriate additional measures, including field hearings, to obtain as wide a range of views as possible from Native American tribes, trademark owners, and other interested parties.

(2) REPORT.—Not later than September 30, 1999, the Commissioner of Patents and Trademarks shall complete the study under this section and submit a report including the findings and conclusions of the study to the chairman of the Committee on the Judiciary of the Senate and the chairman of the Committee on the Judiciary of the House of Representatives.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized on Thursday, September 17, 1998, at 9:30 a.m. on China Technology Transfer.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, September 17, for purposes of conducting a full committee hearing which is scheduled to begin at 10:00 a.m. The purpose of this hearing is to consider the nominations of Gregory H. Friedman to be Inspector General of the Department of Energy; Charles G. Groat to be Director of the United States Geological Survey, Department of the Interior, and to consider any other pending nominations which are ready for consideration before the Committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. SANTORUM. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be granted permission to conduct a hearing on the General Services Administration FY99 Capital Investment and Leasing Program, on the FY99 courthouse construction requests of the Administrative Office of the U.S. Courts, and proposed legislation dealing with public buildings reform Thursday, September 17, 9:00 a.m., Hearing Room (SD–406).

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. SANTORUM. Mr. President I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, September 17, 1998 at 10:00 a.m. to hold a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. SANTORUM. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, September 17, 1998, at 10:00 a.m., for a hearing on the nominations of Kenneth Prewitt, to be Director of the Bureau of the Census, and Robert "Mike" Walker, to be Deputy Director of the Federal Emergency Management Agency.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on the Judiciary, be authorized to hold an executive business meeting during the session of the Senate on Thursday, September 17, 1998, at 9:30 a.m., in room SD226, of the Senate Dirksen Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on the Judiciary, be authorized to hold an executive business meeting during the session of the Senate on Thursday, September 17, 1998, at 10:00, in room SD226, of the Senate Dirksen Office Building.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on Professional Development: Incorporating Advances in Teaching during the session of the Senate on Thursday, September 17, 1998, at 10:00 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SPECIAL COMMITTEE ON THE YEAR 2000 TECHNOLOGY PROBLEM

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Special Committee on the Year 2000 Technology Problem be permitted to meet on September 17, 1998 at 9:30 a.m. for the purpose of conducting a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Subcommittee on Forests and Public Land Management of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, September 17, for purposes of conducting a subcommittee hearing which is scheduled to begin at 2:00 p.m. The purpose of this hearing is to receive testimony on S. 2385, a bill to establish the San Rafael Swell National Heritage Area and the San Rafael National Conservation Area in the State of Utah.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON NATIONAL PARKS, HISTORIC PRESERVATION AND RECREATION

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Subcommittee on National Parks, Historic Preservation and Recreation of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, September 17, for purposes of conducting a subcommittee hearing which is scheduled to begin at 2:00 p.m. The purpose of this hearing is to receive testimony on S. 1175, a bill to reauthorize the Delaware Water Gap National Recreation Area Citizen Advisory Commission for 10 additional years; S. 1641, a bill to direct the Secretary of the Interior to study alternatives for establishing a national historic trail to commemorate and interpret the history of women's rights in the United States; S. 1960, a bill to allow the National Park Service to acquire certain land for addition to the Wilderness Battlefield, as previously authorized by law, by purchase or exchange as well as by donation; S. 2086, a

bill to revise the boundaries of the George Washington birthplace National Monument; S. 2133, a bill to designate former United States Route 66 as "America's Main Street" and authorize the Secretary of the Interior to provide assistance; S. 2239, a bill to revise the boundary of Fort Matanzas National Monument, and for other purposes; S. 2240, a bill to establish the Adams National Historical Park in the Commonwealth of Massachusetts, and for other purposes; S. 2241, a bill to provide for the acquisition of lands formerly occupied by the Franklin D. Roosevelt family at Hyde Park, New York, and for other purposes; S. 2246, a bill to amend the Act which established the Frederick Law Olmsted National Historic Site, in the Commonwealth of Massachusetts, by modifying the boundary, and for other purposes; S. 2247, a bill to permit the payment of medical expenses incurred by the United States Park Police in the performance of duty to be made directly by the National Park Service, and for other purposes; S. 2248, a bill to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision, when required by State law, and for other purposes, S. 2285, the Women's Progress Commemoration Act; S. 2297, a bill to provide for the distribution of certain publication in units of the National Park System under a sales agreement between the Secretary of the Interior and a private contractor; S. 2309, the Gateway Visitor Center Authorization Act of 1998; S. 2401, a bill to authorize the addition of the Paoli Battlefield site in Malvern, Pennsylvania, to Valley Forge National Historical Park, and H.R. 2411, a bill to provide for a land exchange involving the Cape Cod National Seashore and to extend the authority for the Cape Cod National Seashore Advisory Commission.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

211TH ANNIVERSARY OF THE SIGNING OF THE CONSTITUTION

• Mr. LEAHY. Mr. President, this is a great date in the history not only of the United States, but of all free people, and of all people who would be free. On September 17, 1787, a small group of truly remarkable Americans gathered to sign one of the greatest documents in all of human history, the Constitution of the United States.

George Washington signed it as the President of the Constitutional Convention and deputy from Virginia. The names of other signers are familiar to all Americans: Benjamin Franklin, James Madison and Alexander Hamilton. Other names should be more familiar than they are, names like Morris and Pinkney and Dickinson and Rutledge.

We owe them a great debt. They have given us a firm foundation on which has been built our great and abiding stability. Even when this Nation was torn by a terrible fight over the institution of slavery, the Constitution allowed us to recover with amazing speed, become one Nation again, and avoid the generations of smoldering conflict that afflict so many other countries.

Our Constitution is at once solid and flexible. It can and has been amended from time to time to improve the machinery of government and to expand the rights that citizens enjoy. Throughout our history we have sought to follow Madison's wise advice to limit amendments to "certain great and extraordinary occasions."

In Federalist No. 43, James Madison wrote that the Constitution establishes a balanced system for amendment, guarding "equally against that extreme facility, which would render the Constitution too mutable, and that extreme difficulty, which might perpetuate its discovered faults." The Constitution is profoundly conservative, in the best sense of that word. As Madison expressed in Federalist No. 49:

> [A]s every appeal to the people would carry an implication of some defect in government, frequent appeals would, in great measure, deprive the government of that veneration which time bestows on everything and without which perhaps the wisest and freest governments would not possess the requisite stability.

It is remarkable that although some 11,000 constitutional amendments have been offered in our history, and more than 100 in the 105th Congress alone, the elected representatives in Congress and in the States have adopted only 17 since the original Bill of Rights. We have rejected many amendments that seemed to be good ideas at the time, but which on further reflection proved to be unnecessary. We have found that we could achieve the same results by statute, or have on sober reflection recognized that the amendments would have been mere symbolic gestures. We have avoided turning the Constitution into a mere bulletin board on which we "send a message." We have respected it and, most importantly, we have resisted the temptation to limit the fundamental freedoms of Americans. We have rejected the temptation to erode the Bill of Rights.

I cannot ignore the fact that Congress and the States did succumb once to what looked like a good idea without carefully considering the consequences of their action. The eighteenth amendment imposed prohibition and conjured up a swarm of gangsters, bootlegging, and wholesale disobedience of the law. It was a bad idea that had to be undone by another constitutional amendment. We should regard the eighteenth amendment as a reminder that we should go slow, and stop and consider carefully all of the implications of any change before we put it in the Constitution.

I submit that the Constitution of the United States is a good document—not a sacred text—but as good a law as has been written. That is why it has survived as the supreme law of the land with so few alterations throughout the last 200 years.

It has contributed to our success as a Nation by binding us together, rather than tearing us apart. It contains the Great Compromise that allowed small States and large States to join together in a spirit of mutual accommodation and respect. It embodies the protections that make real the pronouncements in our historic Declaration of Independence and give meaning to our inalienable rights to life, liberty and the pursuit of happiness.

The Constitution requires due process and guarantees equal protection of the law. It protects our freedom of thought and expression, our freedom to worship or not as we each choose, and our political freedoms, as well. It is the basis for our fundamental right of privacy and for limiting government's intrusions and burdens in our lives.

I oppose what I perceive to be a growing fascination with laying waste to our Constitution and the protections that have served us well for over 200 years. The First Amendment, separation of powers and power of the purse should be supported and defended.

When we embarked in this Congress, we each swore an oath to support and defend the Constitution. That is our duty to those who forged this great document, our responsibility to those who sacrificed to protect and defend our Constitution, our commitment to our constituents and our legacy to those who will succeed us.

The Framers gave us a remarkable document, an extraordinary system of government and protections for our individual liberties. So I celebrate this day, not with the parades or fireworks of the Fourth of July, but with solemn consideration of how the Framers guaranteed our freedom through checks on government power. Most of all, I mark this day with a renewed commitment to cherish and to protect this most precious of legacies, to resist easy amendments, to resist assaults on our Bill of Rights, and to preserve the Constitution for our children and grandchildren.•

WOMEN'S ST. CLAIR SHORES CIVIC LEAGUE 60TH ANNIVERSARY

• Mr. ABRAHAM. Mr. President, I rise today to honor the St. Clair Shores Civic League, in St. Clair Shores, Michigan on its 60th Anniversary. The mission of the League, "to maintain a high standard of civic life . . . by activities designed to stimulate citizen

participation in government and to promote the cultural growth of the city" is very respectable and has led the organization to be very successful.

The Women's St. Clair Shores Civic League has grown tremendously over the course of over six decades. The committee of six women that eventually became the League, was formed in 1930 to aid the youth of the community and assist in civic improvements. In an effort to better handle their increasing tasks, the committee became the Women's St. Clair Shores Civic League in 1939. Some the League's projects over the years have included consolidating three school districts, building a municipal park, and incorporating St. Clair Shores. These achievements, few among many, are testament to the devotion and hard work of the Women's St. Clair Shores Civic League.

I am proud to congratulate this special organization on 60 years. The Women's St. Clair Shores Civic League will undoubtedly enjoy continued success.•

SCHOOL MODERNIZATION TAX INCENTIVES

• Ms. MOSELEY-BRAUN. Mr. President, today, 39 of my olleagues and I are sending a letter to the Senate Majority Leader, Senator LOTT, and the chairman of the Senate Finance Committee, Senator ROTH, urging them to include school modernization tax incentives in any tax legislation considered by the Senate this year. While we may have different positions on the advisability of enacting such legislation, and different positions on what that legislation should include, we are united in believing that any tax legislation must include significant relief for communities seeking to rebuild and modernize their schools.

This month, according to a recent report from the Department of Education, a record number of students are pouring into our nation's classrooms. 52.7 million children enrolled in elementary and secondary schools this year, a 500,000 student increase from last year. Ten years from now, according to the report, enrollment is expected to reach 54.3 million. We cannot continue to pack these children into today's schools. We need to build an estimated 6,000 new schools over the next 10 years just to keep up with rising enrollment.

In addition, the U.S. General Accounting Office has documented $112 billion worth of deferred maintenance and neglect of existing school buildings. It will cost $112 billion nationwide—$13 billion in Illinois alone—to bring existing school buildings up to good, overall condition. That is not the cost of equipping them with new computers, or even of retrofitting them so teachers have a place to plug in new computers. That is just the cost of bringing existing buildings up to good, overall condition.

Crumbling and overcrowded schools are found in every type of community, all across the nation. The GAO found that 38 percent of urban schools, 30 percent of rural schools, and 29 percent of suburban schools are crumbling down around our children.

The problem is so pervasive because it is a symptom of our failed school finance structure. For more than 100 years, we have relied on local property taxes to finance our schools. This system may have made sense when the nation's wealth was held and measured in terms of property, but it does not make sense today.

According to the GAO, our school finance system actually militates against most communities' best efforts to improve their schools. In 35 states, poor districts have higher tax rates than wealthy districts, but raise less revenue because of lower property values.

In 11 states, courts have actually declared school finance systems unconstitutional. In nearly every case, states have complied by raising property or sales taxes to fund school improvements. Similar litigation is pending in another 16 states, and many of these lawsuits appear likely to result in higher state and local taxes as well.

The Senate has an opportunity this year to break this cycle of crumbling schools and higher local taxes. We have an opportunity to create a new partnership between the federal government, states, and communities to improve our schools. We can do this in a way that does not reduce the projected budget surplus, which is properly being reserved for Social Security, and in a way that maintains continued fiscal discipline.

In last year's Taxpayer Relief Act, the Congress took the first steps toward the creation of this new partnership, when it enacted the Qualified Zone Academy Bond program. Under this program, school districts issue zero-interest bonds, and purchasers of these bonds receive federal income tax credits in lieu of interest. This mechanism can cut the cost of major school improvements by 30 to 50 percent. In Chicago, the school system will presently issue $14 million worth of these bonds for a school renovation project. By using these bonds instead of regular municipal bonds, the school system will save Chicago taxpayers $7 million in interest costs. In other words, this project will cost $14 million, instead of $21 million.

I propose that we use the same mechanism to facilitate school improvements nationwide. According to the Joint Committee on Taxation, we can supply $22 billion worth of these special bonds to states and communities at a cost of only $3.3 billion to the federal treasury over the next five years. That $3.3 billion cost actually represents tax relief for purchasers of these school modernization bonds. Under this plan, communities get better schools and children get a better education; local property taxpayers and federal income taxpayers get lower bills. This is the kind of innovative partnership we need to rebuild and modernize our schools for the 21st century.

Last week, President Clinton, Vice President GORE, governors, members of Congress, cabinet members, parents, teachers, and school officials gathered at 84 sites around the country to focus attention on the urgent need to create a new partnership to modernize our schools. Speaking at a school in Maryland, President Clinton said our "children deserve schools that are as modern as the world in which they will live." He went on to say that, "Nothing we do will have a greater effect on the future of this country than guaranteeing every child, without regard to race or station in life or region in this country, a world-class education. Nothing."

That statement could not be more true. The rungs on the ladder of opportunity in America have always been crafted in the classroom, and in the emerging global economy, the importance of education continues to grow. As H.G. Wells noted, "Human history becomes more and more a race between education and catastrophe."

As we approach the 21st century, we are faced with the real problem that too many of our schools do not provide the kind of learning environment necessary to educate our children for a competitive, global economy. Studies have proven a correlation between building conditions, student achievement, student discipline. The fact is, our children cannot learn in schools that are falling down around them.

I hope the Congress can use the remaining time we are in session, short as it may be, to create a school modernization partnership that will carry our children into the next century. I look forward to working with my colleagues on both sides of the aisle to ensure that our plan is a part of any tax legislation considered this year.

According to a recent Gallup poll, 86 percent of adults support providing federal funds to repair and replace older school buildings. That figure suggests that the American people want Congress to put aside partisanship and ideology and work together to help improve our schools. I hope we won't let them down.

Mr. President, I ask that the text of the letter to Senator LOTT be printed in the RECORD. An identical copy of the letter has been sent to Senator ROTH.

The text of the letter follows:

U.S. SENATE,
Washington, DC, September 17, 1998.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: As you know, the House and Senate have each passed fiscal year 1999

Budget Resolutions calling for the enactment of substantial tax relief legislation. We believe that any such legislation should include major tax relief for communities seeking to rebuild and modernize their school facilities.

The problem of crumbling and overcrowded schools has grown too large and is too important for Congress to ignore. According to the U.S. General Accounting Office (GAO), it will cost $112 billion just to bring existing schools up to good, overall condition. In addition, the Department of Education reports that the nation's school districts will need to build an additional 6,000 schools over the next ten years simply to keep class sizes at current levels as student enrollment rises. Crumbling and overcrowded schools are found in virtually every kind of community and every part of the country. The GAO found that 38 percent of urban schools, 30 percent of rural schools, and 29 percent of suburban schools reported needing extensive repair or replacement of one or more buildings.

The large and growing school infrastructure deficit in the United States reflects problems and inequities in our system of school finance. In 35 States, poor districts have higher tax rates than wealthy districts but raise less revenue because of lower property values. School financing systems have been ruled unconstitutional in 11 states. In nearly every case, States have complied by raising property or sales taxes to fund school improvements. Similar litigation is pending in 16 other States, and many of these lawsuits appear likely to result in higher state and local taxes as well.

The Senate has an opportunity in this year's tax legislation to break this cycle of crumbling schools and higher local taxes. We have an opportunity to create a new partnership between the federal government, States, and communities to improve the learning environment for our children—our economy's most precious asset. We believe this objective can be accomplished in a manner that does not reduce the projected budget surplus, which is properly being reserved for Social Security, and that maintains continued fiscal discipline.

The condition of school facilities has been found to have a direct effect on student behavior and achievement. By helping States and communities rebuild and modernize their schools, the federal government can make a constructive contribution to the quality of education in America, while helping to free resources at the local level for other school initiatives or much-deserved property and sales tax relief.

This subject has been of growing concern to us in recent years. Earlier proposals to commit federal resources to address this problem have been unsuccessful, and it has become clear that needed assistance to schools will only be acceptable to a majority of Senators if it is in the form of tax relief. Therefore, as the Senate considers tax legislation this year, we look forward to working with you to provide substantial tax relief targeted to the rebuilding and modernizing of our nation's schools.

Sincerely,

Carol Moseley-Braun, Ted Kennedy, Patty Murray, John F. Kerry, Robert Torricelli, Tom Daschle, Fritz Hollings, Charles Robb, Chris Dodd, Dale Bumpers.

Max Cleland, Daniel Akaka, Joseph Lieberman, Byron L. Dorgan, Frank R. Lautenberg, Paul S. Sarbanes, Dianne Feinstein, Carl Levin, Mary L. Landrieu, Tom Harkin, Kent Conrad, Jeff Bingaman, Barbara A. Mikulski, Tim Johnson, Harry Reid, Herb Kohl, Barbara Boxer, John Glenn.

Daniel K. Inouye, Jack Reed, Wendell Ford, Dick Durbin, Richard H. Bryan, Max Baucus, Paul Wellstone, Jay Rockefeller, Bob Kerrey, John Breaux, Patrick Leahy, Ron Wyden.●

THE DEPARTMENT OF JUSTICE'S WAR AGAINST CAPITALISM

Mr. GORTON. Mr. President, few of my colleagues would dispute the notion that capitalism is the foundation of America's economic success. Under capitalism, competition inspires innovation. Innovation led in the 19th Century to the industrial revolution, and in the 20th Century to the digital age. These developments have made the United States the richest, most successful nation in the world. But this Administration seems to distrust our capitalist, competitive system and wants to replace it with some sort of "third-way" in which government bureaucrats make major decisions about what innovations will be allowed in our economic system, and when.

I refer particularly, Mr. President, to the Justice Department's vendetta against Microsoft, a company that has had the ingenuity and determination to achieve the American dream. Against the odds, one man with a good idea turned a workshop in his garage into the most successful high technology company in the world. The Administration is now on a path to destroy not only the man and his company but to destroy the dream as well.

Assistant Attorney General Joel Klein, head of the Justice Department's Antitrust Division, has declare war on success in the name of antitrust law. According to Joel Klein's world view, it is the duty of the United States government to protect not the consumer but the company that cannot compete on its own merits.

Mr. Klein has made his ambition abundantly clear. When he testified before the Senate Judiciary Committee in June he said, "We reject categorically the notion that markets will self-correct and we should sit back and watch." Instead, Mr. Klein believes the government should control every move of America's most successful and innovative companies.

What candidate for president ran on this platform? The American people were not informed that free markets were to be abandoned as our principal economic guide. Instead of allowing the best man, or in this case the best company, to win, the Justice Department wants to control the market and dole out slices of it to companies of its choice.

This is anathema to the free market, Mr. President.

The Department's case, after all, is merely an attempt to give Netscape and other Microsoft rivals a leg up in the ongoing battle for market share in the software industry. Microsoft has earned its current prominence in the software industry through hard work, innovation, and consumer choice. The company has been successful because it has had better ideas and more efficient means of turning those ideas into superior products. Consumers in the United States and throughout the world simply prefer Microsoft products.

But jealous rivals who have not reached the same level of success have now enlisted the Justice Department to give them what they and the Administration believe is rightfully theirs—more market share. These rivals, I fear, may soon regret ever having opened this Pandora's box. For a precedent may have already been set. That precedent is that government intervention in the market, in the absence of consumer complaint or dissatisfaction, is acceptable.

That is why I speak here today, Mr. President, as one in a growing number of voices in America in firm opposition to the Administration's case against Microsoft.

As I see it, the Administration is not working for the greater good, but for its own good. Those at the highest levels of this Administration believe they, not the market and certainly not consumers, know what is best for the nation. Rick Rule, former Assistant Attorney General for Antitrust under President Ronald Reagan, summed it up best when he said, "The Hubris reflected in the government's case against Microsoft is monumental."

This is just the beginning, Mr. President. Yesterday, at the Upside Conference, a meeting of high-tech industry leaders here in Washington, Roberta Katz, General Counsel for Netscape, said of the government's case against Microsoft, "This is about a lot more than just Microsoft." To Ms. Katz I say, be careful what you wish for, be very careful what you wish for. Today the government's target is Microsoft, but tomorrow, it could very well be Netscape.

The Antitrust Division, in filing its case against Microsoft, is working to justify an expanded role for government in the high-tech industry. The further its tentacles are allowed to reach into high-tech market, the tighter its grip on the industry will become.

In fact, at a hearing tomorrow before Judge Jackson, the Justice Department will request that it be allowed to expand the scope of its case against Microsoft. There are two explanations for the Justice Department's motives; both are troubling. The first is that the Antitrust division is seeking to increase the aspects of the high-tech industry over which it will gain control if it wins the case. The second is that the Division is becoming increasingly desperate to find an issue, any issue, on which is can prevail in court.

The first point should be of no little concern to Ms. Katz of Netscape and her counterparts at all the other high-tech companies cheering the Justice Department on. But it is the second point on which I would like to expand.

The Antitrust Division knows that its case against Microsoft is literally falling apart at the seams. As my colleagues will recall, on June 23 a three judge United States Appeals Court panel overturned the preliminary injunction issued against Microsoft last December. The heart of the injunction, and the heart of the Department's current case against Microsoft, is the company's decision to integrate its web browser into its Windows operating system.

As soon as the Appeals Court ruled that the integration of browser technology into Windows as not a violation of U.S. antitrust law, Joel Klein started scrambling frantically for other claims to make against Microsoft. If the Administration's concern was truly that Microsoft was acting illegally in integrating products into Windows, the Justice Department would have and should have dismissed its case then and there. But it didn't.

Joel Klein continued attempts to drag more and more issues into the case is telling, Mr. President. Those attempts are a clear sign that the government's real beef with Microsoft is its size. The government can't stand the fact that Microsoft is successful. Microsoft, in the eyes of the Administration, is just too big. So the Justice Department will do everything it can to paint Bill Gates as the bad guy.

As Holman W. Jenkins, Jr. aptly described it in an editorial in Wednesday's Wall Street Journal, Joel Klein "has spraypainted the world with subpoenas, calling companies to testify about every failed and not-yet-failed collaboration between competitive allies and allied competitors in the computer industry."

the strategy, according to Rick Rule, is "the old plaintiff's trick of throwing up lots of snippets of dialogue that try to tar the defendant as a bad guy."

Aside from all the legal commentary, the real issue, Mr. President, is that the Justice Department's case against Microsoft is a bad one. Joel Klein knows it, the high-tech community knows it, and I know it.

No legal wrangling can disguise the fact that what the Administration is doing is wrong. It is not only wrong in the sense that the Justice Department will probably lose in the end. But it is wrong in the sense that the very premise on which it stands is at fundamental odds with the free market capitalism that has made this nation great.

U.S.-ASIA INSTITUTE

• Mr. INOUYE. Mr. President, the U.S.-Asia Institute, a non-profit organization, recently completed its 40th Congressional Staff Delegation to China and Hong Kong in cooperation with the Chinese People's Institute of Foreign Affairs (CPIFA). I am pleased to bring this milestone to the attention of the Senate.

The Institute's commitment to promoting friendship and understanding between countries in Asia and the U.S. government goes back almost 20 years. Founded in 1979 by Esther Kee, Norman Lau Kee, and Joji Konoshima, the U.S.-Asia Institute has been steadily working to achieve its goal through international conferences, seminars, student exchange programs, and Congressional staff trips to Asia.

Among its numerous activities in support of cultural understanding, the U.S.-Asia Institute's Congressional staff trip program to China and Hong Kong is unrivaled. Since its inception in 1985, the China program has hosted more than 320 Congressional staff members in numerous places throughout China—from Heihe in the North on the Russian border to Hainan in the South; from the dynamic coastal cities of Shanghai and Guangzhou to the remote city of Urumqi, an oasis on the ancient Silk Road; and to the capital, Beijing. Over 150 Congressional offices have benefited from the intense, hectic, fact finding programs that provide Congressional staff members a unique opportunity to observe this dynamic nation first-hand and to further their understanding of complex Sino-U.S. relations. This program has survived the sometimes tumultuous relationship between the two countries thanks to the steadfast commitment of the U.S.-Asia Institute and the CPIFA to promote dialog on issues of mutual interest to our two great nations.

I congratulate the U.S.-Asia Institute and CPIFA for their remarkable achievements and hope their long-standing partnership will continue into the 21st century.•

TRIBUTE TO LIEUTENANT GENERAL RICHARD A. BURPEE, U.S. AIR FORCE, RETIRED

• Mr. INHOFE. Mr. President, I rise today to pay tribute to an exceptional leader in recognition of a remarkable career of service to his country—Lieutenant General Richard A. Burpee, United States Air Force, retired. Dick Burpee has amassed a truly distinguished record, including 35 years of service in the Air Force uniform, that merits special recognition on the occasion of his retirement as chairman of the board of directors of the Retired Officers Association.

Born and raised in Delton, Michigan, he is now a distinguished citizen of the great State of Oklahoma. He enlisted in the Air Force just after the Korean War in 1953. Subsequently selected for pilot training, he earned his aviator's wings and Second Lieutenant's commission in 1955.

Over the next decade, Dick served in a variety of flying and staff positions, including assignments as an instructor pilot and as an exchange pilot with the Royal Canadian Armed Forces. In the process, he successfully completed studies leading to the award of a bachelor's degree in economics and a master's degree in public administration.

During a 1967–68 tour of duty with the 12th Tactical Fighter Wing in Vietnam, he distinguished himself with a record of 336 combat missions in the F–4 fighter and the award of the Silver Star, two Distinguished Flying Crosses, a Bronze Star and fifteen air medals.

Air Force leaders recognized the talent and potential of this general-to-be and selected him for prestigious positions at Air Force headquarters in Washington, DC, first in the Office of the Director for Operational Test and Evaluation and subsequently as an aide to the Air Force Vice Chief of Staff.

Following completion of the National War College and selection for promotion to the grade of Colonel, he returned to operational flying duty in a series of leadership positions, ultimately serving as Commander of the Strategic Air Command's (SAC) 509th Bombardment Wing in 1974–1975.

Exceeding even the Strategic Air Command's high standards of leadership excellence, Dick Burpee was hardly getting started. Following selection to General officer rank, he carved a path of performance and achievement through assignments at Headquarters Strategic Air Command, as Commander of the 19th air division, and in senior plans and operations positions at Air Force headquarters in the Pentagon. From 1983 to 1985, the great State of Oklahoma had the good fortune to get to know Dick Burpee as a particularly outstanding Commander of the Oklahoma City Air Logistics Center.

Oklahomans were not alone in recognizing his talents, as he was subsequently promoted to three-star rank and assigned as Director for Operations for the Pentagon's Joint Staff—the highest ranking operations staff officer of our country's Armed Forces.

Finally, in 1988, he was appointed to command the Strategic Air Command's prestigious 15th Air Force, a position he held until his retirement from active military service in 1990.

In addition to the impressive combat record I have already mentioned, I would note that General Burpee's military files reflect an outstanding total of 11,000 flying hours as well as the award of the Defense Distinguished Service Medal, two Distinguished Service Medals, and the Legion of Merit. A true warrior and leader, indeed.

Dick Burpee, however, is not a person who considers even 35 years of arduous

service a full working career. Following his retirement, he started a successful consulting business in management and marketing with aerospace industries and government. Since relocating to Oklahoma City in 1991, he has served as vice president for development and vice president of administration at the University of Central Oklahoma, sits on the board of directors of the United Bank in Oklahoma City, and has been deeply involved with the Oklahoma City Chamber of Commerce. Elected to the board of directors of the Retired Officers Association (TROA) in 1992, he was unanimously selected as TROA's chairman of the board in 1996, a position from which he is now retiring.

Through his stewardship, the Retired Officers Association continues to play a vital role as a staunch advocate of legislative initiatives to maintain readiness and improve the quality of life for all members of the uniformed service community—active, reserve and retired, plus their families and survivors.

I won't describe all of his accomplishments, but will briefly touch on some highlights to illustrate his involvement and concern for military people. As chairman, he has championed the fight for health care equity for retirees of the uniformed services, whose access to the military health care system has been severely curtailed by base closures, downsizing, and shrinking military medical budgets. His persistent and well-reasoned proposals have translated into successful legislative initiatives aimed at expanding Medicare-eligible retirees' access to military facilities and allowing them to enroll in the federal employees health benefits program. He also has been one of the most vocal advocates for ending the practice of capping annual pay raises for active and reserve personnel below those enjoyed by the average American. Happily, those efforts are now bearing fruit in the form of full-comparability raises for the troops in 1999 and, hopefully, from 2000 on.

Taken together, these comprise two of the most important institutional inducements to help reverse declining career retention statistics in all services.

In forcefully articulating the urgency of honoring long-standing health care and retirement commitments to those who have already served and by championing improved quality-of-life initiatives for those now serving, Dick Burpee has significantly raised Congress' sensitivity to these important retention and readiness issues.

Perhaps most importantly, Dick Burpee has distinguished himself and TROA from other, often strident, critics by consistently offering cogent, well-researched plans that outline workable legislative solutions to these complex problems.

My closing observation, with which I am sure you will all agree, is that General Dick Burpee has been, in every sense of the word, a leader in the military, TROA and the entire retired community. Our very best wishes go with him for long life, well-earned happiness, and continued success in service to his Nation and the uniformed servicemembers whom he has so admirably led.

As a former soldier myself, who entered military service at about the same time he did, I offer General Burpee a grateful and heartfelt salute.•

"MEMORIES AND MIRACLES"

• Mr. MOYNIHAN. Mr. President, I rise to commend to the Senate the stirring tale of Jack Ratz, a New Yorker who recently published a remarkable book, Endless Miracles. Mr. Ratz, who resides with his wife, Doris, in the Brooklyn neighborhood of Mill Basin, is one of the last survivors of the flourishing Jewish community of Latvia, which lost all but 300 of its 35,000 members during the Holocaust.

Jack Ratz's memoirs is an eloquent refutation to those who would dare to trivialize, distort, or even deny the Holocaust's important lessons. His book well reflects the affirmative message that Jack Ratz shares with New York City school children during his regular visits to the city classrooms.

As the survivors of the Holocaust succumb to old age there are fewer and fewer eyewitnesses to this tragedy. Jack Ratz has provided an invaluable service with his moving account of the Latvian Holocaust experience.

I ask to have printed in the RECORD a recent article in the New York City Jewish Week about Jack Ratz and "Endless Miracles."

The article follows:

[From the Jewish Week, Aug. 14, 1998]

MEMORIES AND MIRACLES

(By Nancy Beiles)

During a recent trip to Riga, Latvia, Jack Ratz visited a museum commemorating Latvian Holocaust victims, and was drawn to a series of photos of camp inmates hanging on the wall. One in particular caught his attention—a black-and-white photo of a 16-year-old boy, head shaven, wearing work clothes decorated with the Star of David and the number 281.

"I asked the guard, 'Who are those people?' He said, 'they died a long time ago,' recalled Ratz, of Mill Basin, a Latvian-born Holocaust survivor. "I told him I know three of those people. Two were father and son and yes, they were killed. But the photo of the young fellow on the right—he is talking to you. He is me."

Ratz had come to Riga to say Kaddish for members of his family killed in the Rumboli Forest in 1941, and to visit the old ghetto where he and his father lived before being sent off to a series of work and concentration camps.

"All of a sudden I saw a picture of myself hanging on the wall and a flash of memories came rushing back to me of 55 years ago," Ratz recalls, tearfully. "I could only cry. I found myself hanging on the wall with all the dead people.

Of the 35,000 Jews who lived in Latvia at the time of German occupation in 1941, Ratz is one of just 300 who survived. Because of the scarcity of Latvian survivors, their particular experience during the Holocaust is rarely recounted. "Very few Latvian Jews escaped because the general population was not sympathetic to aiding the Jews," says William Schulman, director of the Holocaust Resource Center at Queensborough Community College. 'The Germans made use of the Latvians to guard the Jews and persecute them, to send them to their death. So there are very few memoirs of survivors."

Ratz, who is retired from the television repair business, and his American-born wife, Doris, are and trying to fill that gap in Holocaust memory.

The four years he and his father spent in labor and concentration camps and their subsequent liberation forms the basis for 'Ratz's newly-published memoir, "Endless Miracles" (1998; Shengold Publishers Inc.). Ratz's account caught the attention of Moshe Sheinhaum, president of Shengold Publishers, precisely because it explores episodes of the Holocaust that are not often talked about. "I've published over 70 books on the Holocaust and this is one of the most exciting," says Sheinbaum. "Very little has been done about Riga."

Starting with historical background about the Jewish community in Latvia, the book's emotional beginning describes the first Nazi programs in Riga that would eventually spiral into genocide. Shortly after the Germans arrived in Latvia in 1941, displacing the Russians, who had occupied Latvia just a year earlier, they created two Jewish ghettos. One was for able-bodied men, the other for women, children and the disabled. Just 14 at the time, Ratz could have stayed with his mother and younger siblings, but he decided to "take a chance," he says, and go with his father.

This is the first of the "endless miracles" Ratz describes—fortuitous decisions that saved his life. After he and his father went to the Jewish workers' ghetto, over the course of a few weeks the Nazis executed all the women, children, elderly and disabled men from the other ghetto—including Ratz's mother and siblings—in grisly mass executions in the Rumboli Forest.

With no chance to grieve, Ratz writes, "Even our mourning was cut short. We were forced to return to work immediately under penalty of instant death." The subsequent years are an accumulation of sorrows and terror.

Ratz and his father were first sent to Lenta, a work camp near Riga, then to Salaspils, a death camp, back to Lenta and from there to Stuthoff, another death camp, and Burgraben. During these four years, Ratz and his father managed to stay alive by luck—for example, being in the second half of a line from which the Nazis take the first half to kill, and by what Ratz says can only be attributed to God's grace.

Unlike many survivors, who lost not only their loved ones but also their faith somewhere in the camps, Ratz's faith stayed intact. It was his belief in God that allowed him to weather those years and survive. "If I would not believe in God, I would not be alive today," he says. "By believing it, I felt I survived. God actually picked up his hand and showed me the way."

One time, that way meant masquerading as a skilled craftsman with his father so

they could be eligible for a work slot in a factory near Stuthoff outside of the firing range. On another occasion, it meant stealing cigarettes from guards to trade for food from more recent arrivals who were not yet starved. The loaf of bread that was bartered for two cigarettes helped Ratz and his father ward off hunger a little longer.

Ratz links his experience during those years to that of Jews throughout history, dating back to biblical times—Jews who were persecuted and whose faith was tested. Ratz, whose Hebrew name is Isaac, says that when his father first went with him to the ghetto in Riga, his father identified with Abraham, sensing that he too was being called upon to sacrifice his son, his Isaac.

For his part, Ratz appears in the book as a latter-day Joseph. Like the biblical figure who gave food from the Egyptian storehouses to his hungry brothers during a famine, Ratz, himself weak and hungry, whenever possible retrieved food to give to people in the camps who were hovering ever closer to starvation. On one occasion, he managed to salvage scraps of food from refuse bins in a camp kitchen where he worked; another time, Ratz accidentally discovered a dead horse from which he was able to give to people what was a rare commodity in the camps: meat. "God also showed me how to help people instead of how Hitler destroyed people," Ratz explains.

In Ratz's book, the brutality of the camps springs to life most poignantly in small details that are often overlooked by historians. He tells of sand irritating his throat because the Nazis would use potatoes still caked with soil for the inmates' soup and of relishing the straw matting on the bunks in one camp because he had just come from a camp where he and three others slept on a single wooden board. And he describes his father sewing his few valuables into his hernia belt so that he would have something to trade for food when all else failed.

In 1945, when the Russians finally liberated Ratz and his father, the freedom was initially hollow. "You have to be lucky how you're liberated also," Ratz says. "To be liberated by Russians was not freedom."

Unlike the survivors liberated by Americans or British who were immediately assigned to "displaced persons" camps and given medical treatment, those freed by the Russians were left to fend for themselves. "We were all free, but we did not know what to do or where to go," Ratz writes.

The Russian zone is described by Ratz as chaotic. When it became clear the Russians were not making any arrangements to treat the sick, some newly-free Jews stole to bring those in need of medical care to a hospital. Those Germans from the camps who eluded imprisonment tried to disguise themselves as Jews so that the Russians would not capture them. Ratz chillingly recounts seeing guards from the camp, now wearing prisoners' uniforms, hiding in a crowd. Speaking to the Soviet soldiers in Russian, he pointed them out and watched as the soldiers shot them on the spot.●

UNANIMOUS CONSENT AGREEMENT—S. 1645

Mr. SANTORUM. Mr. President, I ask unanimous consent that immediately following the 9:30 a.m. vote on Friday, the Senate proceed to S. 1645.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDIAN HEALTH CARE IMPROVEMENT ACT AMENDMENTS

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 560, S. 1770.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 1770) to elevate the position of Director of the Indian Health Service to Assistant Secretary of Health and Human Services, to provide for the organizational independence of the Indian Health Service within the Department of Health and Human Services, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. OFFICE OF ASSISTANT SECRETARY FOR INDIAN HEALTH.

(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services the Office of the Assistant Secretary for Indian Health in order to, in a manner consistent with the government-to-government relationship between the United States and Indian tribes—

(1) facilitate advocacy for the development of appropriate Indian health policy; and

(2) promote consultation on matters related to Indian health.

(b) ASSISTANT SECRETARY FOR INDIAN HEALTH.—In addition to the functions performed on the date of enactment of this Act by the Director of the Indian Health Service, the Assistant Secretary for Indian Health shall perform such functions as the Secretary of Health and Human Services may designate. The Assistant Secretary for Indian Health shall—

(1) report directly to the Secretary concerning all policy- and budget-related matters affecting Indian health;

(2) collaborate with the Assistant Secretary for Health concerning appropriate matters of Indian health that affect the agencies of the Public Health Service;

(3) advise each Assistant Secretary of the Department of Health and Human Services concerning matters of Indian health with respect to which that Assistant Secretary has authority and responsibility;

(4) advise the heads of other agencies and programs of the Department of Health and Human Services concerning matters of Indian health with respect to which those heads have authority and responsibility; and

(5) coordinate the activities of the Department of Health and Human Services concerning matters of Indian health.

(c) REFERENCES.—Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to the Director of the Indian Health Service shall be deemed to refer to the Assistant Secretary for Indian Health.

(d) RATE OF PAY.—

(1) POSITIONS AT LEVEL IV.—Section 5315 of title 5, United States Code, is amended—

(A) by striking the following:

"Assistant Secretaries of Health and Human Services (6)."; and

(B) by inserting the following:

"Assistant Secretaries of Health and Human Services (7).".

(2) POSITIONS AT LEVEL V.—Section 5316 of such title is amended by striking the following:

"Director, Indian Health Service, Department of Health and Human Services.".

(e) DUTIES OF ASSISTANT SECRETARY FOR INDIAN HEALTH.—Section 601 of the Indian Health Care Improvement Act (25 U.S.C. 1661) is amended in subsection (a)—

(1) by inserting "(1)" after "(a)";

(2) in the second sentence of paragraph (1), as so designated, by striking "a Director," and inserting "the Assistant Secretary for Indian Health,"; and

(3) by striking the third sentence of paragraph (1) and all that follows through the end of the subsection and inserting the following: "The Assistant Secretary for Indian Health shall carry out the duties specified in paragraph (2).

"(2) The Assistant Secretary for Indian Health shall—

"(A) report directly to the Secretary concerning all policy- and budget-related matters affecting Indian health;

"(B) collaborate with the Assistant Secretary for Health concerning appropriate matters of Indian health that affect the agencies of the Public Health Service;

"(C) advise each Assistant Secretary of the Department of Health and Human Services concerning matters of Indian health with respect to which that Assistant Secretary has authority and responsibility;

"(D) advise the heads of other agencies and programs of the Department of Health and Human Services concerning matters of Indian health with respect to which those heads have authority and responsibility; and

"(E) coordinate the activities of the Department of Health and Human Services concerning matters of Indian health.".

(f) CONTINUED SERVICE BY INCUMBENT.—The individual serving in the position of Director of the Indian Health Service on the date preceding the date of enactment of this Act may serve as Assistant Secretary for Indian Health, at the pleasure of the President after the date of enactment of this Act.

(g) CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO INDIAN HEALTH CARE IMPROVEMENT ACT.—The Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) is amended—

(A) in section 601—

(i) in subsection (c), by striking "Director of the Indian Health Service" both places it appears and inserting "Assistant Secretary for Indian Health"; and

(ii) in subsection (d), by striking "Director of the Indian Health Service" and inserting "Assistant Secretary for Indian Health"; and

(B) in section 816(c)(1), by striking "Director of the Indian Health Service" and inserting "Assistant Secretary for Indian Health".

(2) AMENDMENTS TO OTHER PROVISIONS OF LAW.—The following provisions are each amended by striking "Director of the Indian Health Service" each place it appears and inserting "Assistant Secretary for Indian Health":

(A) Section 203(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 761b(a)(1)).

(B) Subsections (b) and (e) of section 518 of the Federal Water Pollution Control Act (33 U.S.C. 1377 (b) and (e)).

(C) Section 803B(d)(1) of the Native American Programs Act of 1974 (42 U.S.C. 2991b–2(d)(1)).

Mr. SANTORUM. Mr. President, I ask unanimous consent that the committee substitute be agreed to; that the bill be considered read a third time and passed, as amended; that the motion to reconsider be laid upon the table; that the amendment to the title be agreed to; that the amended title be

agreed to; and that any statements relating to the bill appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

The bill (S. 1770), as amended, was considered read the third time and passed.

The title was amended so as to read:

A bill to elevate the position of Director of the Indian Health Service within the Department of Health and Human Services to Assistant Secretay for Indian Health, and for other purposes.

FOUR CORNERS INTERPRETIVE CENTER ACT

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 563, S. 1998.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

A bill (S. 1998) to authorize an interpretive center and related visitor facilities within the Four Corners Monument Tribal Park, and for other purposes.

The Senate proceeded to consider the bill.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the bill be considered read a third time and passed; that the motion to reconsider be laid upon the table; and that any statements relating to the bill appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1998) was considered read the third time and passed, as follows:

S. 1998

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Four Corners Interpretive Center Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Four Corners Monument is nationally significant as the only geographic location in the United States where 4 State boundaries meet;

(2) the States with boundaries that meet at the Four Corners area are Arizona, Colorado, New Mexico, and Utah;

(3) between 1868 and 1875 the boundary lines that created the Four Corners were drawn, and in 1899 a monument was erected at the site;

(4) a United States postal stamp will be issued in 1999 to commemorate the centennial of the original boundary marker;

(5) the Four Corners area is distinct in character and possesses important historical, cultural, and prehistoric values and resources within the surrounding cultural landscape;

(6) although there are no permanent facilities or utilities at the Four Corners Monument Tribal Park, each year the park attracts approximately 250,000 visitors;

(7) the area of the Four Corners Monument Tribal Park falls entirely within the Navajo Nation or Ute Mountain Ute Tribe reservations;

(8) the Navajo Nation and the Ute Mountain Ute Tribe have entered into a Memorandum of Understanding governing the planning and future development of the Four Corners Monument Tribal Park;

(9) in 1992, through agreements executed by the governors of Arizona, Colorado, New Mexico, and Utah, the Four Corners Heritage Council was established as a coalition of Federal, State, tribal, and private interests;

(10) the State of Arizona has obligated $45,000 for planning efforts and $250,000 for construction of an interpretive center at the Four Corners Monument Tribal Park;

(11) numerous studies and extensive consultation with American Indians have demonstrated that development at the Four Corners Monument Tribal Park would greatly benefit the people of the Navajo Nation and the Ute Mountain Ute Tribe;

(12) the Arizona Department of Transportation has completed preliminary cost estimates that are based on field experience with rest-area development for the construction for a Four Corners Monument Interpretive Center and surrounding infrastructure, including restrooms, roadways, parking, water, electrical, telephone, and sewage facilities;

(13) an interpretive center would provide important educational and enrichment opportunities for all Americans; and

(14) Federal financial assistance and technical expertise are needed for the construction of an interpretive center.

(b) PURPOSES.—The purposes of this Act are—

(1) to recognize the importance of the Four Corners Monument and surrounding landscape as a distinct area in the heritage of the United States that is worthy of interpretation and preservation;

(2) to assist the Navajo Nation and the Ute Mountain Ute Tribe in establishing the Four Corners Interpretive Center and related facilities to meet the needs of the general public;

(3) to highlight and showcase the collaborative resource stewardship of private individuals, Indian tribes, universities, Federal agencies, and the governments of States and political subdivisions thereof (including counties); and

(4) to promote knowledge of the life, art, culture, politics, and history of the culturally diverse groups of the Four Corners region.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) CENTER.—The term "Center" means the Four Corners Interpretive Center established under section 4, including restrooms, parking areas, vendor facilities, sidewalks, utilities, exhibits, and other visitor facilities.

(2) FOUR CORNERS HERITAGE COUNCIL.—The term "Four Corners Heritage Council" means the nonprofit coalition of Federal, State, and tribal entities established in 1992 by agreements of the Governors of the States of Arizona, Colorado, New Mexico, and Utah.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(4) RECIPIENT.—The term "recipient" means the State of Arizona, Colorado, New Mexico, or Utah, or any consortium of 2 or more of these States.

(5) FOUR CORNERS MONUMENT.—The term "Four Corners Monument" means the physical monument where the boundaries of the States of Arizona, Colorado, New Mexico and Utah meet.

(6) FOUR CORNERS MONUMENT TRIBAL PARK.—The term "Four Corners Monument Tribal Park" means lands within the legally defined boundary of the Four Corners Monument Tribal Park.

SEC. 4. FOUR CORNERS MONUMENT INTERPRETIVE CENTER.

(a) ESTABLISHMENT.—Subject to the availability of appropriations, the Secretary is authorized to establish within the boundaries of the Four Corners Monument Tribal Park a center for the interpretation and commemoration of the Four Corners Monument, to be known as the "Four Corners Interpretive Center".

(b) LAND.—Land for the Center shall be designated and made available by the Navajo Nation or the Ute Mountain Ute Tribe within the boundary of the Four Corners Monument Tribal Park in consultation with the Four Corners Heritage Council and in accordance with—

(1) the memorandum of understanding between the Navajo Nation and the Ute Mountain Ute Tribe that was entered into on October 22, 1996; and

(2) applicable supplemental agreements with the Bureau of Land Management, the National Park Service, the United States Forest Service.

(c) CONCURRENCE.—Notwithstanding any other provision of this Act, no such center shall be established without the consent of the Navajo Nation and the Ute Mountain Ute Tribe.

(d) COMPONENTS OF CENTER.—The Center shall include—

(1) a location for permanent and temporary exhibits depicting the archaeological, cultural, and natural heritage of the Four Corners region;

(2) a venue for public education programs;

(3) a location to highlight the importance of efforts to preserve southwestern archaeological sites and museum collections;

(4) a location to provide information to the general public about cultural and natural resources, parks, museums, and travel in the Four Corners region; and

(5) visitor amenities including restrooms, public telephones, and other basic facilities.

SEC. 5. CONSTRUCTION GRANT.

(a) GRANT.—The Secretary is authorized to award a Federal grant to the recipient described in section 3(4) for up to 50 percent of the cost to construct the Center. To be eligible for the grant, the recipient shall provide assurances that—

(1) the non-Federal share of the costs of construction is paid from non-Federal sources. The non-Federal sources may include contributions made by States, private sources, the Navajo Nation and the Ute Mountain Ute Tribe for planning, design, construction, furnishing, startup, and operational expenses;

(2) the aggregate amount of non-Federal funds contributed by the States used to carry out the activities specified in subparagraph (A) will not be less than $2,000,000, of which each of the States that is party to the grant will contribute equally in cash or in kind;

(3) States may use private funds to meet the requirements of paragraph (2); and

(4) the State of Arizona may apply $45,000 authorized by the State of Arizona during fiscal year 1998 for planning and $250,000 that is held in reserve by that State for construction toward the Arizona share.

(b) GRANT REQUIREMENTS.—In order to receive a grant under this Act, the recipient shall—

(1) submit to the Secretary a proposal that meets all applicable—

(A) laws, including building codes and regulations;

(B) requirements under the Memorandum of Understanding described in paragraph (2) of this subsection; and

(C) provides such information and assurances as the Secretary may require; and

(2) the recipient shall enter into a Memorandum of Understanding (MOU) with the Secretary providing—

(A) a timetable for completion of construction and opening of the Center;

(B) assurances that design, architectural and construction contracts will be competitively awarded;

(C) specifications meeting all applicable Federal, State, and local building codes and laws;

(D) arrangements for operations and maintenance upon completion of construction;

(E) a description of center collections and educational programing;

(F) a plan for design of exhibits including, but not limited to, collections to be exhibited, security, preservation, protection, environmental controls, and presentations in accordance with professional museum standards;

(G) an agreement with the Navajo Nation and the Ute Mountain Ute Tribe relative to site selection and public access to the facilities; and

(H) a financing plan developed jointly by the Navajo Nation and the Ute Mountain Ute Tribe outlining the long-term management of the Center, including but not limited to—

(i) the acceptance and use of funds derived from public and private sources to minimize the use of appropriated or borrowed funds;

(ii) the payment of the operating costs of the Center through the assessment of fees or other income generated by the Center;

(iii) a strategy for achieving financial self-sufficiency with respect to the Center by not later than 5 years after the date of enactment of this Act; and

(iv) defining appropriate vendor standards and business activities at the Four Corners Monument Tribal Park.

SEC. 6. SELECTION OF GRANT RECIPIENT.

The Secretary is authorized to award a grant in accordance with the provisions of this Act. The Four Corners Heritage Council may make recommendations to the Secretary on grant proposals regarding the design of facilities at the Four Corners Monument Tribal Park.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

IN GENERAL.—

(1) AUTHORIZATIONS.—There are authorized to be appropriated to carry out this Act—

(A) $2,000,000 for fiscal year 1999; and

(B) $50,000 for each of fiscal years 2000 through 2004 for maintenance and operation of the center, program development, or staffing in a manner consistent with the requirements of section 5(b).

(2) CARRYOVER.—Any funds made available under this section that are unexpended at the end of the fiscal year for which those funds are appropriated may be used by the Secretary through fiscal year 2001 for the purposes for which those funds were made available.

(3) RESERVATION OF FUNDS.—The Secretary may reserve funds appropriated pursuant to this Act until a proposal meeting the requirements of this Act is submitted, but no later than September 30, 2000.

SEC. 8. DONATIONS.

Notwithstanding any other provision of law, for purposes of the planning, construction, and operation of the Center, the Secretary may accept, retain, and expand donations of funds, and use property or services donated from private persons and entities or from public entities.

SEC. 9. STATUTORY CONSTRUCTION.

Nothing in this Act is intended to abrogate, modify, or impair any right or claim of the Navajo Nation or the Ute Mountain Ute Tribe, that is based on any law (including any treaty, Executive order, agreement, or Act of Congress).

TRADEMARK LAW TREATY IMPLEMENTATION ACT

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 474, S. 2193.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 2193) to implement the provisions of the Trademark Law Treaty.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3601

(Purpose: To make certain technical corrections to the Trademark Act of 1946, and for other purposes)

Mr. SANTORUM. Mr. President, Senator HATCH has a substitute amendment at the desk, and I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Pennsylvania [Mr. SANTORUM], for Mr. HATCH, proposes an amendment numbered 3601.

The amendment is as follows:

[The bill was not available for printing. It will appear in a future edition of the RECORD.]

Mr. LEAHY. Mr. President, I am pleased that the Senate is considering S. 2193, the Trademark Law Treaty Implementation Act (TLT Act), along with some important technical amendments. I wish that Congress was doing more work on intellectual property issues to maintain America's preeminence in the realm of technology. Specifically I wish we were at conference on the Digital Millennium Copyright Act, which would implement the World Intellectual Property Organization treaties. We should also be passing the Patent Bill, which would help America's inventors of today and tomorrow. I am glad however, at the very least, that we are at last considering the TLT Act.

THE TRADEMARK LAW TREATY IMPLEMENTATION ACT

The TLT Act, which Senator HATCH and I introduced to implement the Trademark Law Treaty of 1994, is an important step in our continuing endeavor to harmonize trademark law around the world so that American businesses—particularly small American businesses like so many of the businesses in Vermont—seeking to expand internationally will face simplified and straightforward trademark registration procedures in foreign countries.

Today more than ever before, trademarks are among the most valuable assets of business. One of the major obstacles in securing international trademark protection is the difficulty and cost involved in obtaining and maintaining a registration in each and every country. Countries around the world have a number of varying requirements for filing trademark applications, many of which are nonsubstantive and very confusing. Because of these difficulties, many U.S. businesses, especially smaller businesses, are forced to concentrate their efforts on registering their trademarks only in certain major countries while pirates freely register their marks in other countries.

The Trademark Law Treaty will eliminate many of the arduous registration requirements of foreign countries by enacting a list of maximum requirements for trademark procedures. Eliminating needless formalities will be an enormous step in the direction of a rational trademark system which will benefit American business, especially smaller businesses, to expand into the international market more freely. Fortunately, the Trademark Law Treaty has already been signed by thirty-five countries and was ratified by the Senate on June 26, 1998.

The U.S. Patent and Trademark Office, the International Trademark Association, and the American Intellectual Property Law Association all support the Trademark Law Treaty and the TLT Act. In a letter to me dated July 1, 1998, the International Trademark Association stated that the Trademark law Treaty is "critical to the success of U.S. companies as they operate in the rapidly expanding and ever increasingly competitive global marketplace." The American Intellectual Property Law Association, in a letter to me dated July 13, 1998, explained: "The Trademark Law Treaty harmonizes a number of the requirements and procedures associated with the filing, registration and renewal of trademarks. It has the potential to bring significant improvements in the trademark practices of a number of important countries around the world in which U.S. trademark owners seek protection. By conforming its trademark law with the obligations of the TLT and ratifying the treaty, the United States can exercise leadership to encourage additional nations, particularly those with burdensome procedural requirements, to also adhere."

THE TECHNICAL CORRECTIONS BILL

I also support the amendment to this legislation of S. 2192, the trademark technical corrections bill. This measure contains several mostly technical amendments to the Lanham Act. The

most important of these amendments addresses the status of "functional" shapes as trademarks. Functional shapes are those whose features are dictated by utilitarian considerations. Under current law, the registration as a trademark of a functional shape becomes "incontestable" after 5 years even though it should never have been registered in the first place. S. 2192 would correct this anomaly by adding functionality as a ground of cancellation of a mark at any time. The U.S. Patent and Trademark Office, the International Trademark Association, and the American Intellectual Property Law Association all support the trademark technical corrections bill. To date, I have not heard any opposition to this amendment.

I hope that after passage of the TLT Act, Congress can get back to work on our other pressing intellectual property issues, namely the Digital Millennium Copyright Act and the Patent Bill, to fortify American intellectual property rights around the world and to help unleash the full potential of America's most creative industries.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3601) was agreed to.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the bill be considered read a third time and passed, as amended; that the motion to reconsider be laid upon the table; and that any statements relating to the bill appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2193), as amended, was considered read the third time and passed.

AUTHORIZING PRINTING OF SENATE DOCUMENT

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 280, submitted earlier today by Senators LUGAR and HARKIN.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The bill clerk read as follows:

A resolution (S. Res. 280) directing the printing as a Senate document of a compilation of materials entitled "History of the United States Senate Committee on Agriculture, Nutrition and Forestry".

The Senate proceeded to consider the resolution.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the resolution be agreed to and that the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 280) was agreed to, as follows:

S. RES. 280

Resolved,

SECTION 1. PRINTING OF HISTORY OF THE UNITED STATES SENATE COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY.

The Public Printer shall print—

(1) as a Senate document a compilation of materials, with illustrations, entitled "History of the United States Senate Committee on Agriculture, Nutrition, and Forestry"; and

(2) 100 copies of the document in addition to the usual number.

INTERNATIONAL COMMISSION OF JURISTS ON TIBET AND ON THE UNITED STATES POLICY WITH REGARD TO TIBET

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 500, S. Con. Res. 103.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A concurrent resolution (S. Con. Res. 103) expressing the sense of Congress in support of the recommendations of the International Commission of Jurists on Tibet and on United States policy with regard to Tibet.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution, which had been reported from the Committee on Foreign Relations with an amendment, as follows:

Resolved

That Congress—

(1) expresses grave concern regarding the findings of the December 1997 International Commission of Jurists report on Tibet that—

(A) repression in Tibet has increased steadily since 1994, resulting in heightened control on religious activity; a denunciation campaign against the Dalai Lama unprecedented since the Cultural Revolution; an increase in political arrests; suppression of peaceful protests; and an accelerated movement of Chinese to Tibet; and

(B) in 1997, the People's Republic of China labeled the Tibetan Buddhist culture, which has flourished in Tibet since the seventh century, as a "foreign culture" in order to facilitate indoctrination of Tibetans in Chinese socialist ideology and the process of national and cultural extermination;

(2) supports the recommendations contained in the report referred to in paragraph (1) that—

(A) call on the People's Republic of China—

(i) to enter into discussions with the Dalai Lama or his representatives on a solution to the question of Tibet;

(ii) to ensure respect for the fundamental human rights of the Tibetan people; and

(iii) to end those practices which threaten to erode the distinct cultural, religious and national identity of the Tibetan people and, in particular, to cease policies which result in the movement of Chinese people to Tibetan territory;

(B) call on the United Nations General Assembly to resume its debate on the question of Tibet based on its resolutions of 1959, 1961, and 1965; and

(C) call on the Dalai Lama or his representatives to enter into discussions with the Government of the People's Republic of China on a solution to the question of Tibet;

(3) commends the appointment by the Secretary of State of a United States Special Coordinator for Tibetan Issues—

(A) to promote substantive dialogue between the Government of the People's Republic of China and the Dalai Lama or his representatives;

(B) to coordinate United States Government policies, programs, and projects concerning Tibet;

(C) to consult with the Congress on policies relevant to Tibet and the future and welfare of all Tibetan people, and to report to Congress in partial fulfillment of the requirements of section 536(a) of the Public Law 103–236; and

(D) to advance United States policy which seeks to protect the unique religious, cultural, and linguistic heritage of Tibet, and to encourage improved respect for Tibetan human rights;

(4) calls on the People's Republic of China to release from detention the 9-year old Panchen Lama, Gedhun Cheokyi Nyima, to his home in Tibet from which he was taken on May 17, 1995, and to allow him to pursue his religious studies without interference and according to tradition;

(5) commends the President for publicly urging President Jiang Zemin, during their recent summit meeting in Beijing, to engage in dialogue with the Dalai Lama; and

(6) calls on the President to continue to work to secure an agreement to begin substantive negotiations between the Government of the People's Republic of China and the Dalai Lama or his representatives.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the committee amendment be agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the resolution, as amended, be agreed to; that the preamble be agreed to; that the motion to reconsider be laid upon the table; and that any statements relating to the concurrent resolution be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 103), as amended, was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, is as follows:

S. CON. RES. 103

Whereas the International Commission of Jurists is a non-governmental organization founded in 1952 to defend the Rule of Law throughout the world and to work towards the full observance of the provisions in the Universal Declaration of Human Rights;

Whereas in 1959, 1960, and 1964, the International Commission of Jurists examined Chinese policy in Tibet, violations of human rights in Tibet, and the position of Tibet in international law;

Whereas in 1960, the International Commission of Jurists found "that acts of genocide has been committed in Tibet in an attempt to destroy the Tibetans as a religious group, * * *" and concluded that Tibet was at least "a de facto independent State" prior to 1951 and that Tibet was a "legitimate concern of the United Nations even on the restrictive interpretation of matters 'essentially within the domestic jurisdiction' of a State.";

Whereas these findings were presented to the United Nations General Assembly, which

adopted three resolutions (1959, 1961, and 1965) calling on the People's Republic of China to ensure respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life, and to cease practices which deprive the Tibetan people of their fundamental human rights and freedoms including their right to self-determination;

Whereas in December 1997, the International Commission of Jurists issued a fourth report on Tibet, examining human rights and the rule of law, including self-determination;

Whereas the President has repeatedly indicated his support for substantive dialogue between the Government of the People's Republic of China and the Dalai Lama or his representatives; and

Whereas on October 31, 1997, the Secretary of State appointed a Special Coordinator for Tibetan Issues to oversee United States policy regarding Tibet: Now, therefore, be it

Resolved by the Senate (the House of Representative concurring), That Congress—

(1) expresses grave concern regarding the findings of the December 1997 International Commission of Jurists report on Tibet that—

(A) repression in Tibet has increased steadily since 1994, resulting in heightened control on religious activity; a denunciation campaign against the Dalai Lama unprecedented since the Cultural Revolution; an increase in political arrests; suppression of peaceful protests; and an accelerated movement of Chinese to Tibet; and

(B) in 1997, the People's Republic of China labeled the Tibetan Buddhist culture, which has flourished in Tibet since the seventh century, as a "foreign culture" in order to facilitate indoctrination of Tibetans in Chinese socialist ideology and the process of national and cultural extermination;

(2) supports the recommendations contained in the report referred to in paragraph (1) that—

(A) call on the People's Republic of China—

(i) to enter into discussions with the Dalai Lama or his representatives on a solution to the question of Tibet;

(ii) to ensure respect for the fundamental human rights of the Tibetan people; and

(iii) to end those practices which threaten to erode the distinct cultural, religious and national identity of the Tibetan people and, in particular, to cease policies which result in the movement of Chinese people to Tibetan territory;

(B) call on the United Nations General Assembly to resume its debate on the question of Tibet based on its resolutions of 1959, 1961, and 1965; and

(C) call on the Dalai Lama or his representatives to enter into discussions with the Government of the People's Republic of China on a solution to the question of Tibet;

(3) commends the appointment by the Secretary of State of a United States Special Coordinator for Tibetan Issues—

(A) to promote substantive dialogue between the Government of the People's Republic of China and the Dalai Lama or his representatives;

(B) to coordinate United States Government policies, programs, and projects concerning Tibet;

(C) to consult with the Congress on policies relevant to Tibet and the future and welfare of all Tibetan people, and to report to Congress in partial fulfillment of the requirements of section 536(a) of the Public Law 103-236; and

(D) to advance United States policy which seeks to protect the unique religious, cultural, and linguistic heritage of Tibet, and to encourage improved respect for Tibetan human rights;

(4) calls on the People's Republic of China to release from detention the 9-year old Panchen Lama, Gedhun Cheokyi Nyima, to his home in Tibet from which he was taken on May 17, 1995, and to allow him to pursue his religious studies without interference and according to tradition;

(5) commends the President for publicly urging President Jiang Zemin, during their recent summit meeting in Beijing, to engage in dialogue with the Dalai Lama; and

(6) calls on the President to continue to work to secure an agreement to begin substantive negotiations between the Government of the People's Republic of China and the Dalai Lama or his representatives.

DIGITAL MILLENNIUM COPYRIGHT ACT

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 535, H.R. 2281.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (H.R. 2281) to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SANTORUM. Mr. President, I ask unanimous consent that all after the enacting clause be stricken, and the text of S. 2037, as passed, be inserted in lieu thereof; that H.R. 2281, as amended, be read a third time and passed; that the motion to reconsider be laid upon the table; that the Senate insist on its amendment, request a conference with the House and the Chair be authorized to appoint conferees on the part of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2231), as amended, was considered read the third time and passed.

The Presiding Officer (Mr. HUTCHINSON) appointed Mr. HATCH, Mr. THURMOND and Mr. LEAHY conferees on the part of the Senate.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the passage of the Senate bill be vitiated, and the bill be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

CHILD NUTRITION AND WIC REAUTHORIZATION AMENDMENTS OF 1998

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 462, S. 2286.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 2286) to amend the National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to extend certain authorities contained in those Acts through fiscal year 2003, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SANTORUM. Mr. President, I find it quite ironic that I am, at the closing here, passing this bill about which I have strong reservations because I was not able to place an amendment in and have an amendment debated on this bill. But this is the child nutrition bill, and I understand a lot of very important things need to be done.

I very much would have liked to have had the opportunity to debate something that all the nutrition groups, all of the public interest groups, as well as a lot of manufacturers who use peanuts, would love to have seen, and that is an opportunity for us not to have the Child Nutrition Program paying an exorbitant amount of money, more than they need to, robbing children of the ability to get food in other places because we pay such high prices for peanuts in this country for food programs.

It would be nice if we would have been able to debate that amendment, but we can't.

Mr. DASCHLE. Mr. President, is it my pleasure today to join my colleagues on the Senate Agriculture, Nutrition, and Forestry Committee in supporting S. 2286, the Child Nutrition and WIC Reauthorization Amendments of 1998. This important bill expands subsidies for snacks in after-school programs, establishes a research program for universal school breakfasts, and makes several administrative changes in the school food service programs, in the Women, Infants and Children (WIC) Program and in the Child and Adult Care Food Program (CACFP). I believe that we have developed a good bill that represents real progress for child nutrition and school food services and I am pleased it has received strong bipartisan support.

I'd like to take a few moments to elaborate on a few aspects of the bill that are particularly important to South Dakotans and to all Americans. I am a cosponsor of the Schools for Achievement Act, which would give all children, regardless of income, access to a healthy, free breakfast. While we were unable to find consensus on a way to fund a universal breakfast program, S. 2286 establishes a multi-year free breakfast study. The study will be conducted at several sites, both rural and urban, and will rigorously evaluate impact of free breakfasts. The purpose of authorizing this study is to test whether providing breakfast at school helps

children perform better scholastically and improves overall levels of child nutrition. I am confident the school breakfast project will justify consideration of the Schools for Achievement Act.

For Congress to have access to the benefits of this study, however, we need to ensure that it will be funded. Funding for the school breakfast research project is uncertain in the House companion bill, because H.R. 3874 includes only authorizing language and relies on the Appropriations Committee to fund the project. As we all are aware, funds available to the Appropriations Committee have been greatly constrained by last year's Balanced Budget Agreement. If funding were unavailable, this research would be delayed, and the intentions of the authorizers would be undermined. We in the Senate have determined that this study should be conducted and have fully paid for it in the context of the Senate bill. I hope the conferees will agree to this position and agree to provide mandatory funding for this project.

I would also like to acknowledge that this is a study only. Nothing in this provision would automatically lead to full implementation of a free breakfast program. Congress will need to revisit this issue to determine whether it would be in the best interest of the Nation to take such a step. I believe this is a prudent way to proceed.

The liberalized administrative guidelines and expanded funding for after-school snacks are also welcome ideas in South Dakota, where our state government recently made a $700,000 commitment to promoting and increasing after-school care. I strongly support that effort, as well as efforts to improve access to after-school programs nationwide. The legislation before the Senate today is another small step toward better care for our nation's school-age children.

Finally, I would like to reassert my support for the programs being reauthorized by this legislation. Federal nutrition programs have a long, successful, track record of providing food, establishing nutrition standards, and collecting health information that have had a dramatic impact on reducing hunger in our country. School lunches are served to 35 million children around the nation. Seven million children receive school breakfasts. Teachers, parents, child care providers and school cooks are educated on the importance of good nutrition and about the necessary components of a healthy diet. Homeless children are served, commodities are distributed, and thousands of school children receive milk. Given the demonstrated effect of improved nutrition on cognition and behavior, the impact of our investment in the nutritional needs of our nation has been profound. I commend the Committee's efforts and look forward to working with my colleagues to enact final legislation to renew these very important child nutrition programs before the year is over.

Mr. SANTORUM. Mr. President, I rise today in support of the Child Nutrition Reauthorization, but also to express disappointment with the manner in which it is being considered by the Senate. While I support the reauthorization of the federal nutrition and feeding programs, I had hoped for the opportunity to offer an amendment to the bill.

The amendment I had hoped to offer would enable the United States Department of Agriculture to purchase lower-priced, non-quota peanuts for use in school feeding programs. Adoption of this amendment would make school feeding programs more cost effective and free up funds to buy additional peanuts and other foods for both the school lunch program and other federal food assistance programs. The amendment would save $14 million for the federal nutrition programs, money that could be put to use feeding more children and families.

I want to offer an explanation for why the amendment will not be considered and also to express my appreciation to those who were prepared to support it. Several Senators were ready to debate the merits of the amendment, and I appreciate their support. Other supporters include nutrition advocacy groups who have worked very hard on behalf of the amendment.

After our return from the August break, the Senate tried to clear this bill for action. Several Senators executed holds on the bill as a result of the amendment I intended to offer. Given the inability to remove those holds and given the few days that remain in the legislative calendar, I asked my Agriculture Committee Chairman, Senator LUGAR, to proceed with the bill so that he may get it to conference and hopefully enacted before adjournment in October.

For the benefit of my colleagues who know my longstanding opposition to the peanut program, let me make clear that my amendment would have done nothing to improve the price of peanuts for manufacturers of peanut products. Instead, it simply aimed to improve the operation of the school nutrition programs.

Generally speaking, peanuts cannot be grown and sold for human consumption in the United States unless the grower has a quota. This quota is really a license, and it enables growers to obtain a premium price for their production. Non-quota peanuts grown in America are no different than their quota cousins, except for the price. Non-quota peanuts that are grown in the U.S. for the export market have an approximate price of $350 per ton, whereas quota peanuts run as much as $650 per ton.

My amendment would simply allow the United States government to buy non-quota peanuts at the same price that we sell American peanuts to foreign countries.

This step is not without precedent. In fact, the Northeast Interstate Dairy Compact, which Congress authorized in 1996, has a similar provision to allow schools to be exempt from paying the artificially higher milk prices that are the result of the dairy compact.

Additionally, Congress has weighed this step in the past. The House Committee on Appropriations twice called attention to this problem in FY 1994 and FY 1995 Agriculture Appropriation Subcommittee Reports. The Subcommittee found that USDA would save approximately $14.4 million in peanut and peanut product purchases for the food assistance program if USDA purchased non-quota peanuts.

In these two committee reports for the FY 1994 and FY 1995 Agriculture Appropriations' bills, the Committee directed the USDA to prepare and submit legislation to the appropriations committees of Congress to amend the peanut program. That legislation would require USDA to purchase non-quota peanuts at world prices for use in domestic feeding programs. To this point, I am not aware that the USDA has ever responded to the Committee's direction.

Mr. President, passage of this amendment makes sense. Peanut products are an extremely popular and nutritious food for millions of people, especially children. High concentrations of important minerals and valuable nutrients make this food an especially important one. If we provide a means for the federal government to buy peanuts for American school children for the same price that we sell American peanuts to consumers in other countries, we can save millions of dollars and enable the government to purchase nutritious food to help additional people.

Moreover, we can improve the school nutrition programs with a minimal cost to growers. Despite the suggestion of doom and gloom from the defenders of the peanut program, the amount of quota peanuts purchased for government food assistance programs is less than 2 percent of the national peanut quota production. Thus, this amendment would have a negligible effect on peanut quota holders—many of whom, I hasten to add, do not grow peanuts themselves.

Mr. President, federal feeding programs are very price sensitive. In times of high prices for specific commodities, it is not uncommon for USDA to seek substitutes for even the most popular food items. in the early 1990s, for example, USDA temporarily suspended feeding program purchases of peanut butter because peanut prices had risen sharply. If the primary goal of the National

School Lunch Program and food assistance programs is to alleviate this nation's malnutrition and hunger, it is wrong for the federal government to waste limited financial resources on buying quota peanuts to further support a small special interest group of peanut quota holders who are already subsidized by the American consumer.

Again, Mr. President, I support passage of the child nutrition reauthorization, but am disappointed in not being able to offer my amendment. I thank those that have worked so hard on its behalf. While the opportunity is not available today to offer the amendment, I have every intention of offering this proposal to relevant legislation in the future.

Mr. LUGAR. Mr. President, I rise today in support of S. 2286, the Child Nutrition and WIC Reauthorization Amendments of 1998. The child nutrition programs have been critically important in helping meet the nutritional needs of our children. The bill before us, which was unanimously reported out of the Senate Committee on Agriculture, Nutrition, and Forestry, is a bipartisan effort to reauthorize and improve these successful programs. Nutrition programs in the Congress have a long history of bipartisan support and cooperation and I am pleased to report that this bill is no exception.

As an Indianapolis school board member and the city's mayor in the 1960's and 1970's, I saw firsthand the need to provide nutritional assistance to children. Since that time, the child nutrition programs have changed in many ways. Although the programs may need some fine tuning, today's programs have been successful in ensuring that our nation's children have access to nutritious foods, providing a critical nutrition safety net.

In 1997, approximately 89,000 schools enrolling 46 million children participated in the National School Lunch program. Although participation in the school breakfast program is not as large as that in the school lunch program, it has continued to grow. Since 1994, school breakfast participation has increased about 13 percent so that now over 70 percent of schools operating a school lunch program also operate a school breakfast program.

The WIC program, which provides nutritious foods and other support to lower-income infants and children (up to age 5), and pregnant, postpartum, and breast-feeding women, has been successful at reducing the number of low-birth-weight babies. Its success has led to strong support over the years. In 1997, average monthly WIC participation was 7.4 million persons. In many states, the program has reached the long sought after goal of full funding.

The bill before us makes improvements to the child nutrition programs. Recently we have seen reports on fraud and abuse in the WIC and Child and Adult Care Food Programs. S. 2286 strengthens the anti-fraud provisions in both programs. The bill requires WIC recipients to be physically present when being certified or recertified for the program. The bill also requires that recipients provide documentation of their income to prove that they are in fact eligible to participate in the program. The legislation cracks down on fraudulent vendors participating in the WIC program. Under most circumstances, WIC vendors who are convicted of trafficking will be permanently disqualified unless it can be proven that the disqualification will cause undue hardship for WIC recipients. In the Child and Adult Care Food Program, State agencies will be required to visit child care sites prior to approving participation by a provider.

The bill also makes amendments to streamline school food service operations. Specifically, S. 2286 allows schools to operate after-school snack programs through the National School Lunch Program rather than separately through the Child and Adult Care Food Program. Without this change, those schools choosing to operate an after-school program, along with the school lunch program, would have to submit paperwork for two separate programs. Streamlining these operations will free up precious time so that school food service personnel can better serve our nation's children. The bill also improves access, for low-income children up to age 18, to the after-school snack and the summer food service programs.

The bill creates a new universal school breakfast pilot program that will evaluate the effect of providing free breakfasts to elementary school children, regardless of income, on school performance and dietary intake. The new spending in this bill is fully offset by rounding down reimbursement rates to the nearest whole cent for meals served by schools and child care centers.

Finally, the bill reauthorizes the child nutrition programs through fiscal year 2003.

Mr. President, S. 2286 was unanimously reported out of the Senate Committee on Agriculture, Nutrition, and Forestry on June 25, 1998. I urge my colleagues to support this bill, thus ensuring that our nation's children continue to have access to these important programs.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the bill, S. 2286, be considered read a third time, and the Senate then proceed to the consideration of calendar No. 480, H.R. 3874, the House-passed companion measure. I further ask consent that all after the enacting clause be stricken and the text of S. 2286 be inserted in lieu thereof, the bill be read a third time and passed, and the motion to reconsider be laid upon the table. I further ask consent that the Senate insist on its amendment, request a conference with the House, and the Chair be authorized to appoint conferees on the part of the Senate. I finally ask that S. 2286 be placed back on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3874), as amended, was read the third time and passed, as follows:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Child Nutrition and WIC Reauthorization Amendments of 1998".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—SCHOOL LUNCH AND RELATED PROGRAMS

SEC. 101. TECHNICAL AMENDMENTS TO COMMODITY PROVISIONS.

(a) IN GENERAL.—Section 6 of the National School Lunch Act (42 U.S.C. 1755) is amended—

(1) by striking subsections (c) and (d); and

(2) by redesignating subsections (e), (f), and (g) as subsections (c), (d), and (e), respectively.

(b) CONFORMING AMENDMENTS.—The National School Lunch Act is amended by striking "section 6(e)" each place it appears in sections 14(f), 16(a), and 17(h)(1)(B) (42 U.S.C. 1762a(f), 1765(a), 1766(h)(1)(B)) and inserting "section 6(c)".

SEC. 102. WAIVER OF REQUIREMENT FOR WEIGHTED AVERAGES FOR NUTRIENT ANALYSIS.

Section 9(f) of the National School Lunch Act (42 U.S.C. 1758(f)) is amended by adding at the end the following:

"(5) WAIVER OF REQUIREMENT FOR WEIGHTED AVERAGES FOR NUTRIENT ANALYSIS.—During the period ending on September 30, 2003, the Secretary shall not require the use of weighted averages for nutrient analysis of menu items and foods offered or served as part of a reimbursable meal under the school lunch or school breakfast program.".

SEC. 103. REQUIREMENT FOR FOOD SAFETY INSPECTIONS.

Section 9 of the National School Lunch Act (42 U.S.C. 1758) is amended by adding at the end the following:

"(h) FOOD SAFETY INSPECTIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a school participating in the school lunch program authorized under this Act or the school breakfast program authorized under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall, at least once during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections.

"(2) EXCEPTION.—Paragraph (1) shall not apply to a school if a food safety inspection of the school is required by a State or local authority.".

SEC. 104. ELIMINATION OF ADMINISTRATION OF PROGRAMS BY REGIONAL OFFICES.

(a) IN GENERAL.—Section 10 of the National School Lunch Act (42 U.S.C. 1759) is amended to read as follows:

"SEC. 10. DISBURSEMENT TO SCHOOLS BY THE SECRETARY.

"(a) AUTHORITY TO ADMINISTER PROGRAMS.—

"(1) IN GENERAL.—Except as provided in paragraph (3), during the period determined under subsection (c), the Secretary shall withhold funds payable to a State under this Act and disburse the funds directly to school food authorities, institutions, and service institutions within the State for the purposes authorized by this Act to the extent that the Secretary has so withheld and disbursed the funds continuously since October 1, 1980.

"(2) USE OF FUNDS.—Any funds withheld and disbursed by the Secretary under paragraph (1) shall be used for the same purposes and be subject to the same conditions as apply to disbursing funds made available to States under this Act.

"(3) STATE ADMINISTRATION.—If the Secretary is administering (in whole or in part) any program authorized under this Act in a State, the State may, on request to the Secretary, assume administrative responsibility for the program at any time during the period determined under subsection (c).

"(b) PROVISION OF TRAINING AND TECHNICAL ASSISTANCE.—During the period determined under subsection (c), the Secretary shall provide a State that assumes administrative responsibility for a program from the Secretary with training and technical assistance to allow for an efficient and effective transfer of the responsibility.

"(c) PERIOD.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply during the period beginning on October 1, 1998, and ending on September 30, 2001.

"(2) EXTENSION.—The Secretary may extend the period described in paragraph (1) that applies to a program administered by the Secretary for a State, for a period not to exceed 2 years, if the State—

"(A) demonstrates to the Secretary that the State will not be able to assume administrative responsibility for the program during the period described in paragraph (1); and

"(B) submits a plan to the Secretary that describes when and how the State will assume administrative responsibility for the program.".

(b) CONFORMING AMENDMENTS.—

(1) Section 7(b) of the National School Lunch Act (42 U.S.C. 1756(b)) is amended in the second sentence by striking "No" and inserting "During the period determined under section 10(c), no".

(2) Section 11(a)(1)(A) of the National School Lunch Act (42 U.S.C. 1759a(a)(1)(A)) is amended by inserting after "section 10 of this Act" the following: "(during the period determined under section 10(c))".

SEC. 105. SPECIAL ASSISTANCE.

Section 11(a)(1) of the National School Lunch Act (42 U.S.C. 1759a(a)(1)) is amended—

(1) in subparagraph (C)—

(A) in clause (i)(I), by striking "3 successive school years" each place it appears and inserting "4 successive school years"; and

(B) in clauses (ii) and (iii), by striking "3-school-year period" each place it appears and inserting "4-school-year period"; and

(2) in subparagraph (D)—

(A) in clause (i)—

(i) by striking "3-school-year period" each place it appears and inserting "4-school-year period"; and

(ii) by striking "2 school years" and inserting "4 school years";

(B) in clause (ii)—

(i) by striking the first sentence; and

(ii) by striking "5-school-year period" each place it appears and inserting "4-school-year period"; and

(C) in clause (iii), by striking "5-school-year period" and inserting "4-school-year period".

SEC. 106. ADJUSTMENTS TO PAYMENT RATES.

(a) IN GENERAL.—Section 11(a)(3)(B) of the National School Lunch Act (42 U.S.C. 1759a(a)(3)(B)) is amended—

(1) by striking "(B) The annual" and inserting the following:

"(B) COMPUTATION OF ADJUSTMENT.—

"(i) IN GENERAL.—The annual";

(2) by striking "Each annual" and inserting the following:

"(ii) BASIS.—Each annual";

(3) by striking "The adjustments" and inserting the following:

"(iii) ROUNDING.—

"(I) THROUGH APRIL 30, 1999.—For the period ending April 30, 1999, the adjustments"; and

(4) by adding at the end the following:

"(II) MAY 1, 1999, THROUGH JUNE 30, 1999.—For the period beginning on May 1, 1999, and ending on June 30, 1999, the national average payment rates for meals and supplements shall be adjusted to the nearest lower cent increment and shall be based on the unrounded amounts used to calculate the rates in effect on July 1, 1998.

"(III) JULY 1, 1999, AND THEREAFTER.—On July 1, 1999, and on each subsequent July 1, the national average payment rates for meals and supplements shall be adjusted to the nearest lower cent increment and shall be based on the unrounded amounts for the preceding 12-month period.".

(b) CONFORMING AMENDMENTS.—Section 4(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)) is amended—

(1) in the second sentence of paragraph (1)(B), by striking "adjusted to the nearest one-fourth cent,"; and

(2) in paragraph (2)(B)(ii), by striking "to the nearest one-fourth cent".

SEC. 107. ADJUSTMENTS TO REIMBURSEMENT RATES.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by striking subsection (f) and inserting the following:

"(f) ADJUSTMENTS TO REIMBURSEMENT RATES.—In providing assistance for breakfasts, lunches, suppers, and supplements served in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the Secretary may establish appropriate adjustments for each such State to the national average payment rates prescribed under sections 4, 11, 13 and 17 of this Act and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) to reflect the differences between the costs of providing meals in those States and the costs of providing meals in all other States.".

SEC. 108. CRIMINAL PENALTIES.

Section 12(g) of the National School Lunch Act (42 U.S.C. 1760(g)) is amended by striking "$10,000" and inserting "$25,000".

SEC. 109. FOOD AND NUTRITION PROJECTS.

Section 12(m) of the National School Lunch Act (42 U.S.C. 1760(m)) is amended by striking "1998" each place it appears and inserting "2003".

SEC. 110. ESTABLISHMENT OF AN ADEQUATE MEAL SERVICE PERIOD.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end the following:

"(n) LENGTH OF MEAL SERVICE PERIOD AND FOOD SERVICE ENVIRONMENT.—A school participating in the school lunch program authorized under this Act or the school breakfast program authorized under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) is encouraged to establish meal service periods that provide children with adequate time to fully consume their meals in an environment that is conducive to eating the meals.".

SEC. 111. BUY AMERICAN.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) (as amended by section 110) is amended by adding at the end the following:

"(o) BUY AMERICAN.—

"(1) DEFINITION OF DOMESTIC COMMODITY OR PRODUCT.—In this subsection, the term 'domestic commodity or product' means—

"(A) an agricultural commodity that is produced in the United States; and

"(B) a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

"(2) REQUIREMENT.—Subject to paragraph (3), the Secretary shall require that a school purchase, to the maximum extent practicable, domestic commodities or products.

"(3) LIMITATIONS.—Paragraph (2) shall apply only to—

"(A) a school located in the contiguous United States; and

"(B) a purchase of an agricultural commodity or product for the school lunch program authorized under this Act or the school breakfast program authorized under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773).".

SEC. 112. PROCUREMENT CONTRACTS.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) (as amended by section 111) is amended by adding at the end the following:

"(p) PROCUREMENT CONTRACTS.—In acquiring a good or service using funds provided under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), a State, State agency, or school may enter into a contract with a person that has provided assistance to the State, State agency, or school in drafting contract specifications.".

SEC. 113. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

(a) ESTABLISHMENT OF SITE LIMITATION.—Section 13(a)(7)(B) of the National School Lunch Act (42 U.S.C. 1761(a)(7)(B)) is amended by striking clause (i) and inserting the following:

"(i) operate—

"(I) not more than 25 sites, with not more than 300 children being served at any 1 site; or

"(II) with a waiver granted by the State agency under standards developed by the Secretary, with not more than 500 children being served at any 1 site;".

(b) ELIMINATION OF INDICATION OF INTEREST REQUIREMENT, REMOVAL OF MEAL CONTRACTING RESTRICTIONS, AND VENDOR REGISTRATION REQUIREMENTS.—Section 13 of the National School Lunch Act (42 U.S.C. 1761) is amended—

(1) in subsection (a)(7)(B)—

(A) by striking clauses (ii) and (iii); and

(B) by redesignating clauses (iv) through (vii) as clauses (ii) through (v) respectively; and

(2) in subsection (l)—

(A) in paragraph (1)—

(i) in the first sentence—

(I) by striking "(other than private nonprofit organizations eligible under subsection (a)(7))"; and

(II) by striking "only with food service management companies registered with the State in which they operate" and inserting "with food service management companies"; and

(ii) by striking the last sentence;

(B) in paragraph (2)—

(i) in the first sentence, by striking "shall" and inserting "may"; and

(ii) by striking the second and third sentences;

(C) by striking paragraph (3); and

(D) by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(c) REAUTHORIZATION OF SUMMER FOOD SERVICE PROGRAM.—Section 13(q) of the National School Lunch Act (42 U.S.C. 1761(q)) is amended by striking "1998" and inserting "2003".

SEC. 114. COMMODITY DISTRIBUTION PROGRAM.

Section 14(a) of the National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking "1998" and inserting "2003".

SEC. 115. CHILD AND ADULT CARE FOOD PROGRAM.

(a) AFTERSCHOOL CARE.—Section 17(a) of the National School Lunch Act (42 U.S.C. 1766(a)) is amended in the fourth sentence by striking "Reimbursement" and inserting "Except as provided in subsection (r), reimbursement".

(b) REVISION TO LICENSING AND ALTERNATE APPROVAL FOR SCHOOLS AND OUTSIDE SCHOOL HOURS CHILD CARE CENTERS.—Section 17(a) of the National School Lunch Act (42 U.S.C. 1766(a)) is amended in the sixth sentence by striking paragraph (1) and inserting the following:

"(1) each institution (other than a school or family or group day care home sponsoring organization) and family or group day care home shall—

"(A)(i) have Federal, State, or local licensing or approval; or

"(ii) be complying with appropriate renewal procedures as prescribed by the Secretary and not be the subject of information possessed by the State indicating that the license of the institution or home will not be renewed;

"(B) in any case in which Federal, State, or local licensing or approval is not available—

"(i) receive funds under title XX of the Social Security Act (42 U.S.C. 1397 et seq.);

"(ii) meet any alternate approval standards established by a State or local government; or

"(iii) meet any alternate approval standards established by the Secretary, after consultation with the Secretary of Health and Human Services; or

"(C) in any case in which the institution provides care to school children outside school hours and Federal, State, or local licensing or approval is not required, meet State or local health and safety standards; and".

(c) AUTOMATIC ELIGIBILITY.—Section 17(c) of the National School Lunch Act (42 U.S.C. 1766(c)) is amended by striking paragraph (6).

(d) PERIODIC SITE VISITS.—Section 17(d) of the National School Lunch Act (42 U.S.C. 1766(d)) is amended—

(1) in the second sentence of paragraph (1), by inserting after "if it" the following: "has been visited by a State agency prior to approval and it"; and

(2) in paragraph (2)(A)—

(A) by striking "that allows" and inserting "that—

"(i) allows";

(B) by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(ii) requires periodic site visits to private institutions that the State agency determines have a high probability of program abuse.".

(e) TAX EXEMPT STATUS AND REMOVAL OF NOTIFICATION REQUIREMENT FOR INCOMPLETE APPLICATIONS.—Section 17(d)(1) of the National School Lunch Act (42 U.S.C. 1766(d)(1)) is amended—

(1) by inserting after the third sentence the following: "An institution moving toward compliance with the requirement for tax exempt status shall be allowed to participate in the child and adult care food program for a period of not more than 180 days, except that a State agency may grant a single extension of not to exceed an additional 90 days if the institution demonstrates, to the satisfaction of the State agency, that the inability of the institution to obtain tax exempt status within the 180-day period is due to circumstances beyond the control of the institution."; and

(2) by striking the last sentence.

(f) DEMONSTRATION PROJECTS.—Section 17(p) of the National School Lunch Act (42 U.S.C. 1766(p)) is amended—

(1) in paragraph (1), by striking "appropriated or otherwise made available for purposes of carrying out this section" and inserting "made available under paragraph (4)";

(2) by striking paragraphs (4) and (5); and

(3) by adding at the end the following:

"(4) FUNDING.—Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary such sums as are necessary to carry out this subsection for each of fiscal years 1999 through 2003. The Secretary shall be entitled to receive the funds and shall accept the funds.".

(g) MANAGEMENT SUPPORT, PARTICIPATION BY AT-RISK CHILD CARE PROGRAMS, AND WIC OUTREACH.—Section 17 of the National School Lunch Act (42 U.S.C. 1766) is amended by adding at the end the following:

"(q) MANAGEMENT SUPPORT.—

"(1) TECHNICAL AND TRAINING ASSISTANCE.—In addition to the training and technical assistance that is provided to State agencies under other provisions of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), the Secretary shall provide training and technical assistance in order to assist the State agencies in improving their program management and oversight under this section.

"(2) FUNDING.—For each of fiscal years 1999 through 2003, the Secretary shall reserve to carry out paragraph (1) $1,000,000 of the amounts made available to carry out this section.

"(r) PROGRAM FOR AT-RISK SCHOOL CHILDREN.—

"(1) DEFINITION OF AT-RISK SCHOOL CHILD.—In this subsection, the term 'at-risk school child' means a school child who—

"(A) is not more than 18 years of age; and

"(B) lives in a geographical area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified as eligible to receive free or reduced price school meals under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

"(2) PARTICIPATION IN CHILD AND ADULT CARE FOOD PROGRAM.—Subject to the other provisions of this subsection, an institution that provides supplements under a program organized primarily to provide care to at-risk school children during after-school hours, weekends, or holidays during the regular school year may participate in the program authorized under this section.

"(3) ADMINISTRATION.—Except as otherwise provided in this subsection, the other provisions of this section apply to an institution described in paragraph (2).

"(4) SUPPLEMENT REIMBURSEMENT.—

"(A) LIMITATIONS.—An institution may claim reimbursement under this subsection only for—

"(i) a supplement served under a program organized primarily to provide care to at-risk school children during after-school hours, weekends, or holidays during the regular school year; and

"(ii) 1 supplement per child per day.

"(B) RATE.—Supplements shall be reimbursed under this subsection at the rate established for free supplements under subsection (c)(3).

"(C) NO CHARGE.—A supplement claimed for reimbursement under this subsection shall be served without charge.

"(s) INFORMATION CONCERNING THE SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.—

"(1) IN GENERAL.—The Secretary shall provide each State agency administering a child and adult care food program under this section with information concerning the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786).

"(2) REQUIREMENTS FOR STATE AGENCIES.—A State agency shall ensure that each participating family and group day care home and child care center (other than an institution providing care to school children outside school hours)—

"(A) receives materials that include—

"(i) a basic explanation of the importance and benefits of the special supplemental nutrition program for women, infants, and children;

"(ii) the maximum State income eligibility standards, according to family size, for the program; and

"(iii) information concerning how benefits under the program may be obtained;

"(B) is provided periodic updates of the information described in subparagraph (A); and

"(C) provides the information described in subparagraph (A) to parents of enrolled children at enrollment.".

SEC. 116. TRANSFER OF HOMELESS ASSISTANCE PROGRAMS TO CHILD AND ADULT CARE FOOD PROGRAM.

(a) SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.—Section 13(a)(3)(C) of the National School Lunch Act (42 U.S.C. 1761(a)(3)(C)) is amended—

(1) in clause (i), by inserting "or" after the semicolon;

(2) by striking clause (ii); and

(3) by redesignating clause (iii) as clause (ii).

(b) CHILD AND ADULT CARE FOOD PROGRAM.—Section 17 of the National School Lunch Act (as amended by section 115(g)) is amended—

(1) in the third sentence of subsection (a)—

(A) by striking "and public" and inserting "public"; and

(B) by inserting before the period at the following: ", and emergency shelters described in subsection (t)"; and

(2) by adding at the end the following:

"(t) PARTICIPATION BY EMERGENCY SHELTERS.—

"(1) DEFINITION OF EMERGENCY SHELTER.—In this subsection, the term 'emergency shelter' means a public or private nonprofit emergency shelter (as defined in section 321 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11351)), or a site operated by the shelter, that provides food service to homeless children and their parents or guardians.

"(2) ADMINISTRATION.—Except as otherwise provided in this subsection, the other provisions of this section shall apply to an emergency shelter that is participating in the program authorized under this section.

"(3) INSTITUTION AND SITE LICENSING.—Subsection (a)(1) shall not apply to an emergency shelter.

"(4) HEALTH AND SAFETY STANDARDS.—To be eligible to participate in the program authorized under this section, an emergency shelter shall comply with applicable State and local health and safety standards.

"(5) MEAL OR SUPPLEMENT REIMBURSEMENT.—

"(A) LIMITATIONS.—An emergency shelter may claim reimbursement under this subsection only for—

"(i) a meal or supplement served to children who are not more than 12 years of age residing at the emergency shelter; and

"(ii) not more than 3 meals, or 2 meals and 1 supplement, per child per day.

"(B) RATE.—A meal or supplement shall be reimbursed under this subsection at the rate established for a free meal or supplement under subsection (c).

"(C) NO CHARGE.—A meal or supplement claimed for reimbursement under this subsection shall be served without charge.".

(c) HOMELESS CHILDREN NUTRITION PROGRAM.—Section 17B of the National School Lunch Act (42 U.S.C. 1766b) is repealed.

SEC. 117. MEAL SUPPLEMENTS FOR CHILDREN IN AFTERSCHOOL CARE.

(a) GENERAL AUTHORITY.—Section 17A(a) of the National School Lunch Act (42 U.S.C. 1766a(a)) is amended—

(1) in paragraph (1), by striking "supplements to" and inserting "supplements under a program organized primarily to provide care for"; and

(2) in paragraph (2), by striking subparagraph (C) and inserting the following:

"(C) operate afterschool programs with an educational or enrichment purpose.".

(b) ELIGIBLE CHILDREN.—Section 17A(b) of the National School Lunch Act (42 U.S.C. 1766a(b)) is amended—

(1) in paragraph (1), by striking "or" at the end;

(2) in paragraph (2), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(3) in the case of children who live in a geographical area served by a school enrolling elementary students in which at least 50 percent of the total number of children enrolled are certified as eligible to receive free or reduced price school meals under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), who are not more than 18 years of age.".

(c) REIMBURSEMENT.—Section 17A(c) of the National School Lunch Act (42 U.S.C. 1766a(c)) is amended—

(1) by striking "(c) REIMBURSEMENT.—For" and inserting the following:

"(c) REIMBURSEMENT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), for"; and

(2) by adding at the end the following:

"(2) LOW-INCOME AREAS.—A supplement provided under this section to a child described in subsection (b)(3) shall be—

"(A) reimbursed at the rate at which free supplements are reimbursed under section 17(c); and

"(B) served without charge.".

SEC. 118. PILOT PROJECTS.

Section 18 of the National School Lunch Act (42 U.S.C. 1769) is amended—

(1) in subsection (c)—

(A) in paragraphs (1) and (7)(A), by striking "1998" each place it appears and inserting "2003"; and

(B) in paragraph (7)—

(i) by striking "(A)"; and

(ii) by striking subparagraph (B); and

(2) by striking subsections (e), (g), (h), and (i).

SEC. 119. BREAKFAST PILOT PROJECTS.

Section 18 of the National School Lunch Act (42 U.S.C. 1769) (as amended by section 118(2)) is amended by inserting after subsection (d) the following:

"(e) BREAKFAST PILOT PROJECTS.—

"(1) IN GENERAL.—During each of the school years beginning July 1, 1999, July 1, 2000, and July 1, 2001, the Secretary shall make grants to State agencies to conduct pilot projects in elementary schools under the jurisdiction of not more than 6 school food authorities approved by the Secretary—

"(A) to reduce paperwork and simplify meal counting requirements; and

"(B) to evaluate the effect of providing free breakfasts to elementary school children, without regard to family income, on participation, academic achievement, attendance and tardiness, and dietary intake over the course of a day.

"(2) NOMINATIONS.—A State agency that desires to receive a grant under this subsection shall submit to the Secretary nominations of school food authorities to participate in a pilot project under this subsection.

"(3) APPROVAL.—The Secretary shall approve for participation in pilot projects under this subsection elementary schools under the jurisdiction of not more than 6 school food authorities selected so as to—

"(A) provide for an equitable distribution of pilot projects among urban and rural elementary schools;

"(B) provide for an equitable distribution of pilot projects among elementary schools of varying family income levels; and

"(C) permit the evaluation of pilot projects to distinguish the effects of the pilot projects from other factors, such as changes or differences in educational policies or program.

"(4) GRANTS TO SCHOOL FOOD AUTHORITIES.—A State receiving a grant under paragraph (1) shall make grants to school food authorities to conduct the pilot projects described in paragraph (1).

"(5) DURATION OF PILOT PROJECTS.—A school food authority receiving amounts under a grant to conduct a pilot project described in paragraph (1) shall conduct the project for the 3-year period beginning July 1, 1999.

"(6) WAIVER AUTHORITY.—The Secretary may waive the requirements of this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) relating to counting of meals, applications for eligibility, and other requirements that would preclude the Secretary from making a grant to conduct a pilot project under paragraph (1).

"(7) REQUIREMENTS FOR PARTICIPATION IN PILOT PROJECT.—To be eligible to participate in a pilot project under this subsection—

"(A) a State—

"(i) shall submit an application to the Secretary at such time and in such manner as the Secretary shall establish to meet criteria the Secretary has established to enable a valid evaluation to be conducted; and

"(ii) shall provide such information relating to the operation and results of the pilot project as the Secretary may reasonably require; and

"(B) a school food authority—

"(i) shall agree to serve all breakfasts at no charge to all children in participating elementary schools;

"(ii) shall not have a history of violations of this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);

"(iii) shall have, under the jurisdiction of the school food authority, a sufficient number of elementary schools that are not participating in the pilot projects to permit an evaluation of the effects of the pilot projects; and

"(iv) shall meet all other requirements that the Secretary may reasonably require.

"(8) REIMBURSEMENT RATES.—A school food authority conducting a pilot project under this subsection shall receive reimbursement for each breakfast served under the pilot project in an amount that is equal to—

"(A) in the case of a school food authority that is determined by the Secretary not to be in severe need, the rate for free breakfasts established under section 4(b)(1)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(1)(B)); and

"(B) in the case of a school food authority that is determined by the Secretary to be in severe need, the rate for free breakfasts established under section 4(b)(2)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)(2)(B)).

"(9) EVALUATION OF PILOT PROJECTS.—

"(A) IN GENERAL.—The Secretary, acting through the Administrator of the Food and Nutrition Service, shall conduct an evaluation of the pilot projects conducted by the school food authorities selected for participation.

"(B) CONTENT.—The evaluation shall include—

"(i) a determination of the effect of participation in the pilot project on the academic achievement, attendance and tardiness, and dietary intake over the course of a day of participating children that is not attributable to changes in educational policies and practices; and

"(ii) a determination of the effect that participation by elementary schools in the pilot project has on the proportion of students who eat breakfast and on the paperwork required to be completed by the schools.

"(C) REPORT.—On completion of the pilot projects and the evaluation, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing the results of the evaluation of the pilot projects required under subparagraph (A).

"(10) FEDERAL REIMBURSEMENT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a school conducting a pilot project under this subsection shall receive a total Federal reimbursement under the school breakfast program in an amount that is equal to the total Federal reimbursement for the school for the prior year under the program (adjusted for inflation and fluctuations in enrollment).

"(B) EXCESS NEEDS.—Funds required for the pilot project in excess of the level of reimbursement received by the school for the prior year (adjusted for inflation and fluctuations in enrollment) may be taken from any non-Federal source or from amounts provided under this subsection.

"(11) FUNDING.—

"(A) IN GENERAL.—Out of any moneys in the Treasury not otherwise appropriated, the Secretary of the Treasury shall provide to the Secretary such sums as are necessary to carry out this subsection, but not more than $20,000,000. The Secretary shall be entitled to receive the funds and shall accept the funds.

"(B) EVALUATION.—Of the amounts made available under subparagraph (A), not more than $12,000,000 shall be made available to carry out paragraph (9).".

SEC. 120. TRAINING AND TECHNICAL ASSISTANCE.

Section 21(e)(1) of the National School Lunch Act (42 U.S.C. 1769b–1(e)(1)) is amended by striking ''1998'' and inserting ''2003''.

SEC. 121. FOOD SERVICE MANAGEMENT INSTITUTE.

Section 21(e)(2)(A) of the National School Lunch Act (42 U.S.C. 1769b–1(e)(2)(A)) is amended by striking ''and $2,000,000 for fiscal year 1996 and each subsequent fiscal year,'' and inserting ''$2,000,000 for each of fiscal years 1996 through 1998, and $3,000,000 for fiscal year 1999 and each subsequent fiscal year''.

SEC. 122. COMPLIANCE AND ACCOUNTABILITY.

Section 22(d) of the National School Lunch Act (42 U.S.C. 1769c(d)) is amended by striking ''1996'' and inserting ''2003''.

SEC. 123. INFORMATION CLEARINGHOUSE.

Section 26(d) of the National School Lunch Act (42 U.S.C. 1769g(d)) is amended in the first sentence by striking ''and $100,000 for fiscal year 1998'' and inserting ''$100,000 for fiscal year 1998, and $166,000 for each of fiscal years 1999 through 2003''.

SEC. 124. REFOCUSING OF EFFORT TO HELP ACCOMMODATE THE SPECIAL DIETARY NEEDS OF INDIVIDUALS WITH DISABILITIES.

Section 27 of the National School Lunch Act (42 U.S.C. 1769h) is amended to read as follows:

''SEC. 27. ACCOMMODATION OF SPECIAL DIETARY NEEDS OF INDIVIDUALS WITH DISABILITIES.

''(a) DEFINITIONS.—In this section:

''(1) COVERED PROGRAM.—The term 'covered program' means—

''(A) the school lunch program authorized under this Act;

''(B) the school breakfast program authorized under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); and

''(C) any other program authorized under this Act or the Child Nutrition Act of 1966 that the Secretary determines is appropriate.

''(2) ELIGIBLE ENTITY.—The term 'eligible entity' means a school food authority, institution, or service institution that participates in a covered program.

''(3) INDIVIDUALS WITH DISABILITIES.—The term 'individual with disabilities' has the meaning given the term in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 706) for purposes of title VII of that Act (29 U.S.C. 796 et seq.).

''(b) ACTIVITIES.—The Secretary may carry out activities to help accommodate the special dietary needs of individuals with disabilities who are participating in a covered program, including—

''(1) developing and disseminating to State agencies guidance and technical assistance materials;

''(2) conducting training of State agencies and eligible entities; and

''(3) issuing grants to State agencies and eligible entities.''.

TITLE II—SCHOOL BREAKFAST AND RELATED PROGRAMS

SEC. 201. ELIMINATION OF ADMINISTRATION OF PROGRAMS BY REGIONAL OFFICES.

Section 5 of the Child Nutrition Act of 1966 (42 U.S.C. 1774) is amended to read as follows:

''SEC. 5. DISBURSEMENT TO SCHOOLS BY THE SECRETARY.

''(a) AUTHORITY TO ADMINISTER PROGRAMS.—

''(1) IN GENERAL.—Except as provided in paragraph (3), during the period determined under subsection (c), the Secretary shall withhold funds payable to a State under this Act and disburse the funds directly to school food authorities, institutions, and service institutions within the State for the purposes authorized by this Act to the extent that the Secretary has so withheld and disbursed the funds continuously since October 1, 1980.

''(2) USE OF FUNDS.—Any funds withheld and disbursed by the Secretary under paragraph (1) shall be used for the same purposes and be subject to the same conditions as apply to disbursing funds made available to States under this Act.

''(3) STATE ADMINISTRATION.—If the Secretary is administering (in whole or in part) any program authorized under this Act in a State, the State may, on request to the Secretary, assume administrative responsibility for the program at any time during the period determined under subsection (c).

''(b) PROVISION OF TRAINING AND TECHNICAL ASSISTANCE.—During the period determined under subsection (c), the Secretary shall provide a State that assumes administrative responsibility for a program from the Secretary with training and technical assistance to allow for an efficient and effective transfer of administrative responsibility.

''(c) PERIOD.—

''(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply during the period beginning on October 1, 1998, and ending on September 30, 2001.

''(2) EXTENSION.—The Secretary may extend the period described in paragraph (1) that applies to a program administered by the Secretary for a State, for a period not to exceed 2 years, if the State—

''(A) demonstrates to the Secretary that the State will not be able to assume administrative responsibility for the program during the period described in paragraph (1); and

''(B) submits a plan to the Secretary that describes when and how the State will assume administrative responsibility for the program.''.

SEC. 202. STATE ADMINISTRATIVE EXPENSES.

(a) HOMELESS SHELTERS.—Section 7(a)(5) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)(5)) is amended by striking subparagraph (B) and inserting the following:

''(B) REALLOCATION OF FUNDS.—

''(i) RETURN TO SECRETARY.—For each fiscal year, any amounts appropriated that are not obligated or expended during the fiscal year and are not carried over for the succeeding fiscal year under subparagraph (A) shall be returned to the Secretary.

''(ii) REALLOCATION BY SECRETARY.—The Secretary shall allocate, for purposes of administrative costs, any remaining amounts among States that demonstrate a need for the amounts.''.

(b) ELIMINATION OF TRANSFER LIMITATION.—Section 7(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(a)) is amended by striking paragraph (6) and inserting the following:

''(6) USE OF ADMINISTRATIVE FUNDS.—Funds available to a State under this subsection and under section 13(k)(1) of the National School Lunch Act (42 U.S.C. 1761(k)(1)) may be used by the State for the costs of administration of the programs authorized under the National School Lunch Act (42 U.S.C. 1751 et seq.) or this Act (except for the programs authorized under sections 17 and 21 of this Act) without regard to the basis on which the funds were earned and allocated.''.

(c) REAUTHORIZATION OF PROGRAM.—Section 7(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(g)) is amended by striking ''1998'' and inserting ''2003''.

SEC. 203. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

(a) CERTIFICATION PERIOD FOR INFANTS.—Section 17(d)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)) is amended by adding at the end the following:

''(C) CERTIFICATION PERIOD FOR INFANTS.—

''(i) IN GENERAL.—Except as provided in clause (ii), the procedures prescribed under subparagraph (A) shall include a requirement that a family that includes an infant shall not be certified to meet income eligibility criteria for the program for more than 180 days after the date of any certification.

''(ii) PRESUMPTIVELY ELIGIBLE FAMILIES.—Clause (i) shall not apply to a family with a member who is an individual described in clause (ii) or (iii) of paragraph (2)(A).''.

(b) ADDITIONAL REQUIREMENTS FOR APPLICANTS.—Section 17(d)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)(3)) (as amended by subsection (a)) is amended by adding at the end the following:

''(D) PHYSICAL PRESENCE.—

''(i) IN GENERAL.—Except as provided in clause (ii), each applicant to the program shall be physically present at each certification determination to determine eligibility under the program.

''(ii) WAIVERS.—A local agency may waive the requirement of clause (i) with respect to an applicant if the agency determines that the requirement, as applied to the applicant, would—

''(I) conflict with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

''(II) present a barrier to participation of a child (including an infant) who—

''(aa) was present at the initial certification visit; and

''(bb) is receiving ongoing health care from a provider other than the local agency; or

''(III) present a barrier to participation of a child (including an infant) who—

''(aa) was present at the initial certification visit;

''(bb) was present at a certification determination within the 1-year period ending on the date of the certification determination described in clause (i); and

''(cc) has 1 or more parents who work.

''(E) INCOME DOCUMENTATION.—

''(i) IN GENERAL.—Except as provided in clause (ii), to be eligible for the program, each applicant to the program shall provide—

''(I) documentation of household income; or

''(II) documentation of participation in a program described in clause (ii) or (iii) of paragraph (2)(A).

''(ii) WAIVERS.—A State agency may waive the requirement of clause (i) with respect to—

''(I) an applicant for whom the necessary documentation is not available; or

''(II) an applicant, such as a homeless woman or child, for whom the agency determines the requirement of clause (i) would present a barrier to participation.

''(iii) REGULATIONS.—The Secretary shall prescribe regulations to carry out clause (ii)(I).

''(F) VERIFICATION.—The Secretary shall issue regulations under this paragraph prescribing when and how verification of income shall be required.''.

(c) DISTRIBUTION OF NUTRITION EDUCATION MATERIALS.—Section 17(e)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(e)(3)) is amended—

(1) by striking ''(3) The'' and inserting the following:

''(3) NUTRITION EDUCATION MATERIALS.—

''(A) IN GENERAL.—The''; and

(2) by adding at the end the following:

''(B) SHARING OF MATERIALS WITH CSFP.—The Secretary may provide, in bulk quantity, nutrition education materials (including materials promoting breastfeeding) developed with funds made available for the program authorized under this section to State agencies administering the commodity supplemental food program authorized under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (Public Law 93–86; 7 U.S.C. 612c note) at no cost to that program.''.

(d) VARIETY OF FOODS.—Section 17(f)(1)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)(C)) is amended—

(1) by redesignating clauses (ii) through (x) as clauses (iii) through (xi), respectively; and

(2) by inserting after clause (i) the following:

"(ii) in the case of any State that provides for the purchase of foods under the program at retail grocery stores, a plan to limit participation by the stores to stores that offer a variety of foods, as determined by the Secretary;".

(e) USE OF CLAIMS FOR VENDORS AND PARTICIPANTS.—Section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by striking paragraph (21) and inserting the following:

"(21) USE OF CLAIMS FROM VENDORS AND PARTICIPANTS.—A State agency may use funds recovered from vendors and participants, as a result of a claim arising under the program, to carry out the program during—

"(A) the fiscal year in which the claim arises;

"(B) the fiscal year in which the funds are collected; or

"(C) the fiscal year following the fiscal year in which the funds are collected.".

(f) RECIPIENTS PARTICIPATING AT MORE THAN 1 SITE.—Section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by adding at the end the following:

"(23) RECIPIENTS PARTICIPATING AT MORE THAN 1 SITE.—Each State agency shall implement a system designed by the State agency to identify recipients who are participating at more than 1 site under the program.".

(g) HIGH RISK VENDORS.—Section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) (as amended by subsection (f)) is amended by adding at the end the following:

"(24) HIGH RISK VENDORS.—Each State agency shall—

"(A) identify vendors that have a high probability of program abuse; and

"(B) conduct compliance investigations of the vendors.".

(h) REAUTHORIZATION OF PROGRAM.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended in subsections (g)(1) and (h)(2)(A) by striking "1998" each place it appears and inserting "2003".

(i) PURCHASE OF BREAST PUMPS.—Section 17(h)(1)(C) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(1)(C)) is amended—

(1) by striking "(C) In" and inserting the following:

"(C) REMAINING AMOUNTS.—

"(i) IN GENERAL.—Except as provided in clause (ii), in"; and

(2) by adding at the end the following:

"(ii) BREAST PUMPS.—

"(I) IN GENERAL.—Beginning with fiscal year 2000, a State agency may use amounts made available under clause (i) for the purchase of breast pumps.

"(II) MAINTENANCE OF EFFORT.—From amounts allocated for nutrition services and administration to amounts allocated for supplemental foods, a State agency that exercises the authority of subclause (I) shall transfer an amount equal to the amount expended for the purchase of breast pumps, or transferred under this subclause, from amounts allocated for nutrition services and administration for the preceding fiscal year.".

(j) TECHNICAL AMENDMENT.—Section 17(h)(2)(A)(iv) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(2)(A)(iv)) is amended by striking ", to the extent funds are not already provided under subparagraph (I)(v) for the same purpose,".

(k) LEVEL OF PER-PARTICIPANT EXPENDITURE FOR NUTRITION SERVICES AND ADMINISTRATION.—Section 17(h)(2)(B)(ii) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(2)(B)(ii)) is amended by striking "15 percent" and inserting "10 percent (except that the Secretary may establish a higher percentage for State agencies that are small)".

(l) TECHNICAL AMENDMENTS.—Section 17(h)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(3)) is amended—

(1) in subparagraph (E), by striking "(except as provided in subparagraph (G))"; and

(2) by striking subparagraphs (F) and (G).

(m) CONVERSION OF AMOUNTS FOR SUPPLEMENTAL FOODS TO AMOUNTS FOR NUTRITION SERVICES AND ADMINISTRATION.—Section 17(h)(5)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(5)(A)) is amended in the matter preceding clause (i) by striking "achieves" and all that follows through "such State agency may" and inserting "submits a plan to reduce average food costs per participant and to increase participation above the level estimated for the State agency, the State agency may, with the approval of the Secretary,".

(n) INFANT FORMULA PROCUREMENT.—

(1) COMPETITIVE BIDDING SYSTEM.—Section 17(h)(8)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)(A)) is amended by adding at the end the following:

"(iii) COMPETITIVE BIDDING SYSTEM.—A State agency using a competitive bidding system for infant formula shall award a contract to the bidder offering the lowest net price unless the State agency demonstrates to the satisfaction of the Secretary that the weighted average retail price for different brands of infant formula in the State does not vary by more than 5 percent.".

(2) REVIEW AND APPROVAL OF SOLICITATIONS.—Section 17(h)(8) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(8)) is amended by adding at the end the following:

"(K) REVIEW AND APPROVAL OF SOLICITATIONS.—The Secretary shall—

"(i) prior to the issuance of an infant formula cost containment contract solicitation under this paragraph, review the solicitation to ensure that the solicitation does not contain any anticompetitive provisions; and

"(ii) approve the solicitation only if the solicitation does not contain any anticompetitive provisions.".

(o) INFRASTRUCTURE AND BREASTFEEDING SUPPORT AND PROMOTION.—Section 17(h)(10)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(10)(A)) is amended by striking "1998" and inserting "2003".

(p) MANAGEMENT INFORMATION SYSTEM PLAN.—Section 17(h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) is amended by adding at the end the following:

"(11) MANAGEMENT INFORMATION SYSTEM PLAN.—

"(A) IN GENERAL.—In consultation with State agencies, retailers, and other interested persons, the Secretary shall establish a long-range plan for the development and implementation of management information systems (including electronic benefit transfers) to be used in carrying out the program.

"(B) REPORT.—Not later than 2 years after the date of enactment of this paragraph, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on actions taken to carry out subparagraph (A).

"(C) INTERIM PERIOD.—Prior to the date of submission of the report of the Secretary required under subparagraph (B), the cost of systems or equipment that may be required to test management information systems (including electronic benefit transfers) for the program may not be imposed on a retail food store.".

(q) USE OF FUNDS IN PRECEDING AND SUBSEQUENT FISCAL YEARS.—

(1) IN GENERAL.—Section 17(i)(3)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)(3)(A)) is amended—

(A) by striking "subparagraphs (B) and (C)" and inserting "subparagraph (B)"; and

(B) by striking clauses (i) and (ii) and inserting the following:

"(i)(I) not more than 1 percent (except as provided in subparagraph (C)) of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for allowable expenses incurred under this section for supplemental foods during the preceding fiscal year; and

"(II) not more than 1 percent of the amount of funds allocated to a State agency under this section for nutrition services and administration for a fiscal year may be expended by the State agency for allowable expenses incurred under this section for supplemental foods and nutrition services and administration during the preceding fiscal year; and

"(ii)(I) for each fiscal year, of the amounts allocated to a State agency for nutrition services and administration, an amount equal to not more than 1 percent of the amount allocated to the State agency under this section for the fiscal year may be expended by the State agency for allowable expenses incurred under this section for nutrition services and administration during the subsequent fiscal year; and

"(II) for each fiscal year, of the amounts allocated to a State agency for nutrition services and administration, an amount equal to not more than ½ of 1 percent of the amount allocated to the State agency under this section for the fiscal year may be expended by the State agency, with the prior approval of the Secretary, for the development of a management information system, including an electronic benefit transfer system, during the subsequent fiscal year.".

(2) CONFORMING AMENDMENTS.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(A) in subsection (h)(10)(A), by inserting after "nutrition services and administration funds" the following: "and supplemental foods funds"; and

(B) in subsection (i)(3)—

(i) by striking subparagraphs (C) through (G); and

(ii) by redesignating subparagraph (H) as subparagraph (C).

(r) FARMERS MARKET NUTRITION PROGRAM.—Section 17(m) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)) is amended—

(1) in the first sentence of paragraph (3), by inserting "or from program income" before the period at the end;

(2) in paragraph (6)—

(A) in subparagraph (C)—

(i) by striking "serve additional recipients in";

(ii) by striking clause (ii) and inserting the following:

"(ii) documentation that demonstrates that—

"(I) there is a need for an increase in funds; and

"(II) the use of the increased funding will be consistent with serving nutritionally at-risk persons and expanding the awareness and use of farmers' markets;";

(iii) in clause (iii), by striking the period at the end and inserting "; and"; and

(iv) by adding at the end the following:

"(iv) whether, in the case of a State that intends to use any funding provided under subparagraph (G)(i) to increase the value of the Federal share of the benefits received by a recipient, the funding provided under subparagraph (G)(i) will increase the rate of coupon redemption.";

(B) by striking subparagraph (F);

(C) in subparagraph (G)—

(i) in clause (i)—

(I) in the first sentence, by striking "that wish" and all follows through "to do so" and inserting "whose State plan"; and

(II) in the second sentence, by striking "for additional recipients"; and

(ii) in the second sentence of clause (ii), by striking "that desire to serve additional recipients, and"; and

(D) by redesignating subparagraph (G) as subparagraph (F); and

(3) in paragraph (9)(A), by striking "1998" and inserting "2003".

(s) DISQUALIFICATION OF CERTAIN VENDORS.—

(1) IN GENERAL.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended by adding at the end the following:

"(o) DISQUALIFICATION OF VENDORS CONVICTED OF TRAFFICKING OR ILLEGAL SALES.—

"(1) IN GENERAL.—Except as provided in paragraph (4), a State agency shall permanently disqualify from participation in the program authorized under this section a vendor convicted of—

"(A) trafficking in food instruments (including any voucher, draft, check, or access device (including an electronic benefit transfer card or personal identification number) issued in lieu of a food instrument under this section); or

"(B) selling firearms, ammunition, explosives, or controlled substances (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for food instruments.

"(2) NOTICE OF DISQUALIFICATION.—The State agency shall—

"(A) provide the vendor with notification of the disqualification; and

"(B) make the disqualification effective on the date of receipt of the notice of disqualification.

"(3) PROHIBITION OF RECEIPT OF LOST REVENUES.—A vendor shall not be entitled to receive any compensation for revenues lost as a result of disqualification under this subsection.

"(4) EXCEPTIONS IN LIEU OF DISQUALIFICATION.—

"(A) IN GENERAL.—A State agency may permit a vendor that, but for this paragraph, would be disqualified under paragraph (1), to continue to redeem food instruments or otherwise provide supplemental foods to participants if the State agency determines, in its sole discretion according to criteria established by the Secretary, that—

"(i) disqualification of the vendor would cause hardship to participants in the program authorized under this section; or

"(ii)(I) the vendor had, at the time of the conviction under paragraph (1), an effective policy and program in effect to prevent violations of this section; and

"(II) the ownership of the vendor was not aware of, did not approve of, did not benefit from, and was not involved in the conduct of the violation.

"(B) CIVIL PENALTY.—If a State agency authorizes a vendor that, but for this paragraph, would be disqualified under paragraph (1) to redeem food instruments or provide supplemental foods under subparagraph (A), in lieu of disqualification, the State agency shall assess the vendor a civil penalty in an amount determined by the State agency, except that—

"(i) the amount of the civil penalty shall not exceed $20,000; and

"(ii) the amount of civil penalties imposed for violations investigated as part of a single investigation may not exceed $40,000.".

(2) REGULATIONS.—The amendment made by paragraph (1) shall take effect on the date on which the Secretary of Agriculture issues a final regulation that includes the criteria for—

(A) making hardship determinations; and

(B) determining the amount of a civil money penalty in lieu of disqualification.

(t) CRIMINAL FORFEITURE.—Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) (as amended by subsection (s)(1)) is amended by adding at the end the following:

"(p) CRIMINAL FORFEITURE.—

"(1) IN GENERAL.—In addition to any other penalty or sentence, a court may order that a person forfeit to the United States all property described in paragraph (2), in imposing a sentence on a person convicted of a violation of this section (including a regulation) under—

"(A) section 12(g) of the National School Lunch Act (42 U.S.C. 1760(g)); or

"(B) any other Federal law imposing a penalty for embezzlement, willful misapplication, stealing, obtaining by fraud, or trafficking in food instruments, funds, assets, or property, that have a value of $100 or more.

"(2) PROPERTY SUBJECT TO FORFEITURE.—All property, real and personal, used in a transaction or attempted transaction, to commit, or to facilitate the commission of, a violation (other than a misdemeanor) of any provision of this section (including a regulation), or proceeds traceable to a violation of any provision of this section (including a regulation), shall be subject to forfeiture to the United States under paragraph (1).

"(3) INTEREST OF OWNER.—No interest in property shall be forfeited under this subsection as the result of any act or omission established by the owner of the interest to have been committed or omitted without the knowledge or consent of the owner.

"(4) PROCEEDS.—The proceeds from any sale of forfeited property and any amounts forfeited under this subsection shall be used—

"(A) first, to reimburse the Department of Justice, the Department of the Treasury, and the United States Postal Service for the costs incurred by the Departments or Service to initiate and complete the forfeiture proceeding;

"(B) second, to reimburse the Office of Inspector General of the Department of Agriculture for any costs incurred by the Office in the law enforcement effort resulting in the forfeiture;

"(C) third, to reimburse any Federal, State, or local law enforcement agency for any costs incurred in the law enforcement effort resulting in the forfeiture; and

"(D) fourth, by the State agency to carry out approval, reauthorization, and compliance investigations of vendors.".

(u) STUDY AND REPORT ON COST CONTAINMENT PRACTICES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the effect of cost containment practices of States under the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) for the selection of vendors and approved food items (other than infant formula) on—

(A) program participation;

(B) access and availability of prescribed foods;

(C) voucher redemption rates and actual food selections by participants;

(D) participants on special diets or with specific food allergies;

(E) participant consumption of, and satisfaction with, prescribed foods;

(F) achievement of positive health outcomes; and

(G) program costs.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General shall submit to the Secretary of Agriculture, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing the results of the study conducted under paragraph (1).

(v) STUDY AND REPORT ON WIC SERVICES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study that assesses—

(A) the cost of delivering services under the special supplemental nutrition program for women, infants, and children authorized under section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786), including the costs of implementing and administering cost containment efforts;

(B) the fixed and variable costs incurred by State and local governments for delivering the services;

(C) the quality of the services delivered, taking into account the effect of the services on the health of participants; and

(D) the costs incurred for personnel, automation, central support, and other activities to deliver the services and whether the costs meet Federal audit standards for allowable costs under the program.

(2) REPORT.—Not later than 3 years after the date of enactment of this Act, the Comptroller General shall submit to the Secretary of Agriculture, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing the results of the study conducted under paragraph (1).

SEC. 204. NUTRITION EDUCATION AND TRAINING.

Section 19(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(i)) is amended—

(1) by striking the subsection heading and all that follows through paragraph (3)(A) and inserting the following:

"(i) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—

"(A) FUNDING.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 1997 through 2003."; and

(2) by redesignating paragraphs (4) and (5) as paragraphs (2) and (3), respectively.

TITLE III—COMMODITY DISTRIBUTION PROGRAMS

SEC. 301. COMMODITY DISTRIBUTION PROGRAM REFORMS.

(a) COMMODITY SPECIFICATIONS.—Section 3(a) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100–237; 7 U.S.C. 612c note) is amended by striking paragraph (2) and inserting the following:

"(2) APPLICABILITY.—Paragraph (1) shall apply to—

"(A) the commodity supplemental food program authorized under sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (Public Law 93–86; 7 U.S.C. 612c note);

"(B) the food distribution program on Indian reservations authorized under section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b)); and

"(C) the school lunch program authorized under the National School Lunch Act (42 U.S.C. 1751 et seq.).".

(b) CUSTOMER ACCEPTABILITY INFORMATION.—Section 3(f) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100–237; 7 U.S.C. 612c note) is amended by striking paragraph (2) and inserting the following:

"(2) CUSTOMER ACCEPTABILITY INFORMATION.—

"(A) IN GENERAL.—The Secretary shall ensure that information with respect to the types and forms of commodities that are most useful is collected from recipient agencies participating in programs described in subsection (a)(2).

"(B) FREQUENCY.—The information shall be collected at least once every 2 years.

"(C) ADDITIONAL SUBMISSIONS.—The Secretary—

"(i) may require submission of information described in subparagraph (A) from recipient agencies participating in other domestic food assistance programs administered by the Secretary; and

"(ii) shall provide the recipient agencies a means for voluntarily submitting customer acceptability information.".

SEC. 302. FOOD DISTRIBUTION.

(a) IN GENERAL.—Sections 8 through 12 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100–237; 7 U.S.C. 612c note) are amended to read as follows:

"SEC. 8. AUTHORITY TO TRANSFER COMMODITIES BETWEEN PROGRAMS.

"(a) TRANSFER.—Subject to subsection (b), the Secretary may transfer any commodities purchased for a domestic food assistance program administered by the Secretary to any other domestic food assistance program administered by the Secretary if the transfer is necessary to ensure that the commodities will be used while the commodities are still suitable for human consumption.

"(b) REIMBURSEMENT.—The Secretary shall, to the maximum extent practicable, provide reimbursement for the value of the commodities transferred under subsection (a) from accounts available for the purchase of commodities under the program receiving the commodities.

"(c) CREDITING.—Any reimbursement made under subsection (b) shall—

"(1) be credited to the accounts that incurred the costs when the transferred commodities were originally purchased; and

"(2) be available for the purchase of commodities with the same limitations as are provided for appropriated funds for the reimbursed accounts for the fiscal year in which the transfer takes place.

"SEC. 9. AUTHORITY TO RESOLVE CLAIMS.

"(a) IN GENERAL.—The Secretary may determine the amount of, settle, and adjust all or part of a claim arising under a domestic food assistance program administered by the Secretary.

"(b) WAIVERS.—The Secretary may waive a claim described in subsection (a) if the Secretary determines that a waiver would serve the purposes of the program.

"(c) AUTHORITY OF THE ATTORNEY GENERAL.—Nothing in this section diminishes the authority of the Attorney General under section 516 of title 28, United States Code, or any other provision of law, to supervise and conduct litigation on behalf of the United States.

"SEC. 10. PAYMENT OF COSTS ASSOCIATED WITH REMOVAL OF COMMODITIES THAT POSE A HEALTH OR SAFETY HAZARD.

"(a) IN GENERAL.—The Secretary may use funds available to carry out section 32 of the Act of August 24, 1935 (49 Stat. 774, chapter 641; 7 U.S.C. 612c), that are not otherwise committed, for the purpose of reimbursing States for State and local costs associated with the removal of commodities distributed under any domestic food assistance program administered by the Secretary if the Secretary determines that the commodities pose a health or safety hazard.

"(b) ALLOWABLE COSTS.—The costs—

"(1) may include costs for storage, transportation, processing, and destruction of the hazardous commodities; and

"(2) shall be subject to the approval of the Secretary.

"(c) REPLACEMENT COMMODITIES.—

"(1) IN GENERAL.—The Secretary may use funds described in subsection (a) for the purpose of purchasing additional commodities if the purchase will expedite replacement of the hazardous commodities.

"(2) RECOVERY.—Use of funds under paragraph (1) shall not restrict the Secretary from recovering funds or services from a supplier or other entity regarding the hazardous commodities.

"(d) CREDITING OF RECOVERED FUNDS.—Funds recovered from a supplier or other entity regarding the hazardous commodities shall—

"(1) be credited to the account available to carry out section 32 of the Act of August 24, 1935 (49 Stat. 774, chapter 641; 7 U.S.C. 612c), to the extent the funds represent expenditures from that account under subsections (a) and (c); and

"(2) remain available to carry out the purposes of section 32 of that Act until expended.

"SEC. 11. AUTHORITY TO ACCEPT COMMODITIES DONATED BY FEDERAL SOURCES.

"(a) IN GENERAL.—The Secretary may accept donations of commodities from any Federal agency, including commodities of another Federal agency determined to be excess personal property pursuant to section 202(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(d)).

"(b) USE.—The Secretary may donate the commodities received under subsection (a) to States for distribution through any domestic food assistance program administered by the Secretary.

"(c) PAYMENT.—Notwithstanding section 202(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(d)), the Secretary shall not be required to make any payment in connection with the commodities received under subsection (a).".

(b) EFFECT ON PRIOR AMENDMENTS.—The amendment made by subsection (a) does not affect the amendments made by sections 8 through 12 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Public Law 100–237; 7 U.S.C. 612c note), as in effect on September 30, 1998.

TITLE IV—EFFECTIVE DATE

SEC. 401. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act and the amendments made by this Act take effect on October 1, 1998.

The Presiding Officer (Mr. HUTCHINSON) appointed Mr. LUGAR, Mr. COCHRAN, Mr. MCCONNELL, Mr. HARKIN and Mr. LEAHY conferees on the part of the Senate.

ORDERS FOR FRIDAY, SEPTEMBER 18, 1998

Mr. SANTORUM. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 8:30 a.m., Friday, September 18. I further ask that when the Senate reconvenes on Friday, immediately following the prayer, the journal of proceedings be approved, no resolutions come over under the rule, the call of the calendar be waived, and the morning hour be deemed to have expired, and the time for the two leaders be reserved.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SANTORUM. For the information of all Members, the Senate will convene tomorrow morning at 8:30 a.m. and begin 1 hour of debate on the veto message to accompany the partial-birth abortion ban legislation. Upon the conclusion of debate time the Senate will vote on the question of passing the bill, "the objections of the President to the contrary notwithstanding." Following that vote, the Senate may turn to the consideration of any legislative or executive items cleared for action. As a reminder to all Members, a vote has been scheduled to occur at 2:20 p.m. Tuesday, September 22 in relation to the KENNEDY minimum wage amendment.

ORDER FOR ADJOURNMENT

Mr. SANTORUM. If there is no further business to come before the Senate, I now ask unanimous consent the Senate stand in adjournment under the previous order, following the remarks of the Senator from Pennsylvania or any person he should yield to.

The PRESIDING OFFICER (Mr. DEWINE). Without objection, it is so ordered.

Mr. SANTORUM. Thank you, Mr. President.

PARTIAL-BIRTH ABORTION

Mr. SANTORUM. If I can, let us return to the issue that we have spent a great deal of the day debating. I know the hour is late. Let me thank the staff who are here, the pages, and others. The pages are actually very happy I am up here talking, because if I talk for a little while longer they will not have school in the morning. So that will be a good thing for them—as I see the smiles down there and the encouragement to wind it up and get going.

I thank the Senator from Arkansas for his indulgence in presiding during these remarks. But as I mentioned today, I think this is one of the most important issues we can face here in the U.S. Senate. As the Senator from Ohio eloquently said, it begins the process of defining who we are as a country and what will become of us as a civilization if we do not begin to draw lines where lines need to be drawn.

I just find it remarkable that we seem to create these fictions when it comes to life. When it comes to the life of little children, we create this fiction in our mind. And it was a fiction that was created back when Roe v. Wade was decided that these were not really babies.

We did not have good ultrasounds then and the kind of technology where we could really see how developed these little babies were in the womb. They were just sort of passed off as these sort of blobs. Yet, we now know, through the miracle of ultrasound, and other techniques, that these are precious little developing babies.

It is very difficult as a father who has seen those ultrasounds of our children to dismiss the humanity, that my wife Karen was carrying a blob of tissue or something that was prehuman. But we tell these lies to ourselves in order that we can go on and in order that we can sort of live with our own internal inconsistencies.

One lie you cannot tell, one lie that is inescapable—inescapably alive—is the lie of partial-birth abortion being something that is medically necessary or that simply this baby is just sort of this blob of tissue. This baby is outside

of the mother. Its arms, its legs, its torso, outside of the mother—just inches away from being born.

One of the things I often marvel at—and I just do not understand—is why wouldn't you, if you have gone through the process, as I described earlier today, of dilating the cervex over 3 days, reaching in with forceps and pulling the baby out in a breached position, which is dangerous, again, for the baby and mother, and you deliver that entire baby, why wouldn't you just let the rest of the baby come out?

Why is it necessary to protect the health of the mother at that point in time—now that you have gone through all this other procedure—at that very crucial moment when the doctor takes those scissors and begins the process of killing that baby? Why at that moment is the mother's health in less danger if you kill that baby than if you just gave that little, helpless, defenseless and, yes, even at times imperfect life the opportunity for life?

Why does that so endanger the mother to do that? Why is it necessary to thrust these Metzenbaum scissors into the base of the baby's skull? Why is it necessary to suction the baby's brains out?

So many doctors have described to me in testimony—and today at a press conference—the complications resulting from this blind procedure where the physician has to feel for the base of the neck and could slip and miss. As the Senator from Tennessee testified today, there are large vessels, blood vessels within a centimeter from the point where this procedure is done that a minor miss could lacerate and cause hemorrhaging and severe complications, or by thrusting the scissors in the back of the neck, through a bony part of the brain, you could only imagine what would happen to the skull of that baby and what damage that skull could do to the mother.

How can we—how can we—continue to contend or pretend that this is healthy for the mother to end this baby's life when it is this close and a delivery could be performed? Let's get away from that charade because it is a charade. It is not about the health of the mother; it is about killing a baby. It is about making sure, beyond any certainty, beyond any doubt, that the result of this abortion you are going to have is a dead baby.

That is what this is about. This is about a lethal form of abortion, not a healthy form for the mother—far from it. Even folks who disagree with this legislation will tell you that this very well may not be the safest form. In fact, that organization has not done any studies to prove it is safe, that is, the American College of Obstetrics and Gynecologists. They have done no studies to prove that this procedure is safe, that this procedure is preferable.

They say—they say—and I will quote them—they say:

> [We] could identify no circumstances under which this procedure . . . would be the only option to save the life or preserve the health of the woman.

That is an admission by the organization that all those in opposition to this bill use as their medical shield. Listen to what they say. They never read this part of the letter. They only read the second part, which I will read to fully disclose. I will read it again, an ACOG policy statement emanating from the review declared that:

> A select panel [the panel they selected to review this] could identify no circumstances under which this procedure [partial-birth abortion], would be the only option to save the life or preserve the health of the woman.

They went on to say that a partial-birth abortion:

> . . . however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman.

They say that:

> . . . only the doctor, in consultation with the patient based upon the woman's particular circumstances can make this decision.

That is what you hear from the other side. What you do not hear from the other side is that this report lists no circumstances to support that claim. They can give, and in fact have given—this was written well over a year ago—they have given no medical situation, no scenario, no hypothetical where what they say may happen would, in fact, happen, which is that a partial-birth abortion would be preferable to some other procedure. They just think it might.

Now, I might be wrong, but there are probably very few things that are happening in obstetrics today that haven't happened for the past several years. There are not a lot of new things coming up. There are problems that come up routinely. There may be some strange problems; they are probably not new.

To make this kind of statement and support it with no evidence is irresponsible. To use this organization and this statement as a shield when they cannot provide one single example where this procedure would be preferable, again, just builds up the record that I have laid out. This entire debate is based upon a series of misleading statements to try to divert attention away from the horrible, barbaric reality and the fact that this is not a medically necessary procedure.

I want to get back for 1 minute to the issue of life of the mother which I addressed a few minutes ago. I said I would read the piece of legislation itself to put to bed, if you will, any concern by anyone who might be listening that there isn't a legitimate life-of-the-mother exception. I noted the American Medical Association's letter of endorsement of this bill. They believe there is a legitimate exception if the life of the mother is in danger.

Let me read the actual legislation, the paragraph on prohibition of partial-birth abortion:

> . . . shall not apply to a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, illness, or injury.

Now, I cannot imagine a life-of-the-mother situation this does not cover. In fact, I don't recall any example from the other side of a life-of-the-mother situation that this does not cover. They just say it is different from other life-of-the-mother exceptions that we put forward. But they don't say where the "hole" is in the exception.

I think it is very clear and very certain that there is an adequate protection in that case.

I will say that I cannot imagine—and I have talked to many physicians on this point—I cannot imagine a woman coming into an emergency room where her life is in danger, whether she is hemorrhaging or has preeclampsia—I can't imagine a doctor, being presented with this emergency case where they must act within a short period of time, saying, "We are going to dilate your cervix over a 3-day period of time and we will perform this procedure." That just wouldn't happen. It is almost absurd to suggest that this would actually be used in a situation where the life of the mother was threatened.

Yes, there is a life-of-the-mother exception, but there is absolutely no circumstance I could conceive of—and I don't recall any information from any of the medical experts by the other side coming out and saying medical experts believe that there is a case where the life of the mother is in danger in an emergency situation where they may use this. I don't think they even made claims of the woman presenting herself to a hospital or a clinic, where her life is in danger, that any practitioner would use a 3-day procedure.

While there is a life-of-the-mother exception in there, and I think it is a solid one, it is certainly not one that I believe will ever be used, because this procedure certainly doesn't comport with a life-threatening situation because of the time it takes.

Since I have the AMA letter here, I want to read it. I think it is important for the RECORD to reflect the support of the American Medical Association, "physicians dedicated to the health of America." That is their saying under their logo.

They say:

> Our support of this legislation is based on three specific principles. First, the bill would allow a legitimate exception where the life of the mother was endangered, thereby preserving the physician's judgment to take any medically necessary steps to save the life of the mother. Second, the bill would clearly define the prohibited procedure so that it is clear on the face of the legislation what act is to be banned. Finally, the bill would give any accused physician the right to have his

or her conduct reviewed by the State medical board before a criminal trial commenced. In this manner, the bill would provide a formal role for valuable medical peer determination in any enforcement proceeding.

The AMA believes that with these changes, physicians will be on notice as to the exact nature of the prohibited conduct.

Thank you for the opportunity to work with you towards restricting a procedure we all agree is not good medicine.

Not good medicine.

With respect to the points they make, many of the courts—while some have validated the statutes, some of the courts have been concerned about vagueness, of what procedure we are actually defining.

We worked with the American Medical Association to come up with a new definition, a tighter definition that put the physician, as they say, on notice as to the exact nature of the prohibited conduct, which I think is important to meet constitutional scrutiny.

Second, we provide an opportunity for the procedure and the conduct of the physician to be reviewed by the State medical board to see whether, in fact, it was necessary under some circumstance, which was an important peer review element that we think is a safeguard, if you will, for the physician.

A couple of other points that I want to make before I go back to talking about what I was talking about when we had to conclude debate earlier today.

This is a picture of a young man by the name of Tony Melendez. That is Tony. Tony Melendez will be here in Washington tomorrow up in the Senate gallery watching the vote on partial-birth abortion, because Tony's disability, Tony's handicap, is one of the disabilities that has been mentioned here on the floor as a good reason to perform a partial-birth abortion.

Senators come up and say there are children who will be so grossly deformed. They may be blind—I am not making this up; this is what was said—blind, or without arms or without legs, and they went on with other deformities. Well, Tony Melendez is a thalidomide baby. Tony Melendez doesn't have any arms. Tony Melendez was born in Rivas, Nicaragua. His father was a graduate of the International Academy of Agriculture in this town and had a good job in the sugar refinery.

Sara, his mother, was an elementary school teacher. They had their first child, named Jose. In the summer of 1961, she had a second pregnancy. She was given thalidomide to treat her morning sicknesses because it was hailed as a safer alternative to other sedatives to deal with morning sickness. On January 9, 1962, Sara gave birth to Tony. He had no arms, 11 toes, and a severe club foot that would require surgical repair if he were ever to have a chance to walk. He was typical of babies who were exposed to thalidomide at the early stages of pregnancy.

Well, his family was very concerned about showing the baby to the mother because of the fear of her reaction. When they did give little Tony to his mother, she embraced her child with the confidence that he would live a full and meaningful life, regardless of his flaws. Still there was question of how he could live a normal life with no arms. Young Tony answered the question one day when he was in his crib. His mother had put away the toys that he had been given as gifts because she assumed he would be unable to enjoy them. However, Tony showed he could play just like any other child when a red balloon landed in his crib. He began bouncing it up and down with his feet, laughing and giggling. She placed the toys in the crib and vowed that day that she would never assume Tony could not do anything because of his disability. She would let him try.

Tony needed corrective surgery for his club foot. Since Nicaragua did not have adequate facilities, or the level of care he needed, they went to Los Angeles. Due to the nature and length of time involved in Tony's corrective surgery, the family decided to stay in the United States and become citizens. Tony spent most of his childhood in Southeastern California.

Tony enjoyed sports, particularly volley ball—volley ball?—where he would hit the ball with his head back over the net. And, of course, he liked soccer. As a sixth grader, Tony wanted to play a game that the neighbor kids were playing, in which his brother Jose excelled—basketball. He tried, with great difficulty, with his feet to do what his peers did so easily with their hands. After being told by his brother that he could not do it, he was determined to do it, and despite blistering and even bleeding toes, one day he eventually succeeded. The one thing Tony hated more than anything else was growing up and not being treated as an equal. When once asked whether he preferred to be called handicapped or disabled, Tony responded that he would like to be called "human."

At the age of 14, in high school, he demanded to be transferred out of a handicapped class to the regular classroom with students. He was allowed to go to a normal gym class. In his first gym class, he was watched intensely by the others when class started. Jumping jacks? How would a kid with no arms do jumping jacks? The other kids tried to determine that, and they watched and tried to be subtle in looking. And Tony jumped and shouted and counted in unison with the others. The rest of the class accepted him readily.

In his teenage years, Tony showed a talent for music. He learned to play the guitar with his feet. At first, he played at various events, such as weddings, funerals, and special events at his church. Eventually, he turned his guitar talent into a full-time vocation. Here is a picture of Tony Melendez today. In connection with his church, he would also talk to groups of kids about his story and how one can overcome difficulty. Tony's life was such an inspirational story, and he was selected to be a "gift" to the Pope by a Catholic youth group during a papal visit to California in 1987. Tony gave a performance to a live audience of 6,000 at the Universal Amphitheater in Hollywood. He performed at World Youth Day in 1991 and World Youth Day in Denver 1993. He also has appeared on numerous television shows and performed at major sporting events, recently singing the National Anthem at Yankee Stadium, I believe. Tony now resides in Dallas, Texas.

Why do I talk about Tony Melendez? Today on the floor of the Senate, the Senator from California referred to some people up in the galleries as women who needed to have partial-birth abortions, and that they would be here tomorrow standing in the Halls staring at Senators as they walked in here to make sure they knew—that we knew they were there to keep this procedure legal. Tony Melendez, and so many like Tony who are not perfect in the eyes of our society—but, of course, are perfect in the eyes of God—will be there also to represent the millions of little babies who could not be there themselves, to remind every Member that walks on this floor that there is a severe cost, a human cost to what we will be voting on tomorrow. And the ones who have the arrow or the bull's-eye on their back, who are the target of partial-birth abortion—at least if you believe the arguments on the other side—are people like Tony Melendez who, because they are not perfect, don't deserve to live.

I have always found it ironic, and I will never forget the last time we brought this bill up on the floor of the Senate. I remember standing here waiting for the debate to begin and working on some remarks, and the debate that was going on around us. The vote that was finally taken was on a bill to provide individuals with disabilities the right to an education in a classroom. I will never forget the Members, many of which oppose banning partial-birth abortions; I will never forget those Members coming to the floor and standing up with passion, which I respect, admire, and support, about how children with disabilities should have the right to live a fulfilling, complete life, and should be given rights to education. Or as they did under the Americans With Disability Act, where they should have the right to public transportation, the right to have access to buildings, to cut the curbs at the corners so they can have access to sidewalks—rights, rights, rights—with the passion that was the hallmark of liberalism in this country—until this

issue, because with the very next vote they cast they made this statement: If you can survive the womb, we will defend your rights. But we will not defend your right to be born in the first place. In fact, you are the very reason this procedure needs to continue, because we don't want you. You are not what we are looking for in people.

What a loss this country would have without Tony Melendez. But had partial-birth abortions been around when Tony was in his mother's womb, many on this floor would stand up and argue that he is just the kind of baby that we need to get rid of with this procedure. The Bible says, and Abraham Lincoln quoted, "A house divided against itself cannot stand." You cannot stand up and passionately argue for the rights of the disabled, and with the same breath not give them the right to exist in the first place. It doesn't make sense. It isn't logical or rational. Oh, it may be political; it may make sense because little babies in the womb don't vote, but it makes no logical sense, and it makes no moral sense to draw that line where it doesn't exist.

The Senator from Illinois said today that we should not have this debate with anecdotes. Yet, this debate has been all anecdotes on the other side because the facts are not in their favor. So I thought it was important to present some anecdotes on the other side, to lay out what we are missing. Tony's is a happy story, but earlier today I talked about some stories that were not so happy. The endings were so fairy tale-like.

Let me talk about another one of those stories—a little girl named Mary Bernadette French. In 1993, Jeannie French was overjoyed to learn she was pregnant with twins. Four months into her pregnancy, tragedy struck and Jeannie learned her daughter Mary was not developing normally.

Specialists identified an opening at the base of the baby's neck. Mary was diagnosed with occipital encephalocele, a condition in which the majority of the brain develops outside the skull. Prospects for a normal life for the child were very dim. Jeannie's doctors advised her to abort Mary due to the severity of the disability and in order to reduce the complications of the twin birth.

What a horrible thing she must have had to deal with—two lives within her, one, according to the doctor, potentially threatening the other. Because Mary could not have survived normal labor, Jeannie and her husband opted for a cesarean section. In December of 1993, Mary was born 1 minute after her twin brother, Will. Hospital staff promptly moved Will to the nursery. Mary stayed with her parents, was welcomed into the world by her parents, grandparents, and close friends of the family. Mary was held, loved, and serenaded for 6 hours. She quietly passed away that afternoon.

That is little Mary in the arms, I believe, of her grandmother.

In memory of her daughter, Jeannie French testified in favor of the ban on partial-birth abortions before the Senate Judiciary Committee. She explained that Mary's life was short but meaningful. She entreated the committee: "Some children by nature cannot live. If we are to call ourselves a civilized culture, we must allow that their death be natural, peaceful, and painless. And if other pre-born children face a life of disability, let us welcome them into society with our arms open in love."

For the RECORD, Jeannie French requested meetings with the President, pleading with him on more than one occasion to listen to a fellow Democrat, she said, who is on the other side of the debate. She explained in the letter:

> We simply want the truth to be heard regarding the risks of carrying disabled children to term. You say that partial-birth abortion has to be legal, for cases like ours, because women's bodies would be "ripped to shreds" by carrying their very sick children to term. By your repeated statements, you imply that partial-birth abortion is the only or most desirable response to children suffering severe disabilities like our children.

What she showed is that instead of giving her child a death sentence, she found it within herself to love that child. She found it within herself to name that child, to welcome that child into the family, to commit to that child as a child who will always be part of the family, who will always be in her memory and in the memory of her twin brother—not a bag of tissue discarded and executed, ignored, and put behind them, but loved, accepted, welcomed, and committed to memory; with pain, yes, but with the knowledge that in the 6 hours that little Mary Bernadette French lived, she knew love. She was loved by her mother and father. What greater gift can a parent give? What a life, as short as it was, to know only love and her parents.

Jeannie continues her efforts today to educate the public about partial-birth abortion. She also works to ensure that people know that the lives of disabled children, while short, are sometimes painful and not in vain because they teach us so much about us.

Finally, a case—I hate to say "case"; a little girl—a little girl who I talked about a lot last year, a little girl by the name of Donna Joy Watts who, with Tony Melendez tomorrow, will be here as another example—in this case, a real life example—of how a mother, who was not only asked and encouraged but almost forced to abort her child, could not find a hospital to deliver her child.

The Watts family, Donny and Lori Watts, had to go to three hospitals in Maryland to find a hospital that would deliver their child. We hear so much talk on the floor about, "We need to make sure that women have access to abortion." What we are finding out and what I have found out through this debate is that we actually need to make sure that women who want to deliver their baby have access to a hospital to deliver their baby and have access to care once that baby is delivered.

The Wattses ended up at a hospital in Baltimore. Their daughter was diagnosed with multiple problems. Hydrocephalus was the principal one. Again, hydrocephalus is water on the brain. She had so much cerebral fluid that it impeded the normal development of the brain. In her case, they believed that she had little to no brain. But the Watts family said they were going to move forward, that they were going to accept and love their child, and they wanted to deliver their child and give it every opportunity for life.

At every step of the process, even the last step, the OB/GYNs recommended abortion, because not only did she have hydrocephalus but part of her brain was developing outside of her skull, and that this baby had no chance of survival.

She was born on November 26, 1991, through cesarean section. Again, an option available for hydrocephalus, because the baby's head is too big to go through the birth canal, is to do a cesarean section. There are other methods: Draining the fluid from the head and then delivering through the vagina. In this case, they chose cesarean section.

She was born with very serious health problems. The most remarkable thing after the birth was that the hospital staff made no attempt to feed her in the traditional sense. The doctors at the University of Maryland where she was delivered believed that Donna Joy's deformities would prevent her from suckling, eating, or swallowing. Because a neural tube defect made her feeding difficult, Donna received only IV fluids for the first days of her life. But Lori refused to give up. Initially, she fed breast milk to Donna Joy with a sterilized eye dropper to provide sustenance, because they wouldn't feed her. Then, at 2 weeks of age, the shunt that was placed in Donna Joy's head—by the way, the shunt. It took 3 days for Lori and Donny to convince the doctors to do an operation on her brain to relieve the pressure from the fluid. The doctors thought she was just going to die, so they didn't want to treat her. But finally after 3 days of pounding away at the doctors they did the procedure. Two weeks later, the shunt, which allows the fluid to drain from the brain, failed, and she was readmitted to the hospital for corrective surgery.

When the tray of food was delivered to their hospital room by mistake, Lori had a brainstorm. She mashed the contents together, created her own food for the newborn with rice, bananas and

baby formula, and she fed the mixture to the baby one drop at a time with a feeding syringe. Unfortunately, Donna Joy's fight for life became even more complicated.

After 2 months, she underwent an operation to correct occipital—I won't get into the terms but another problem. After 4 months, a CT scan revealed that she also suffered from another condition which results from an incomplete cleavage of the brain. She also suffered from epilepsy, sleep disorder, and continued digestive complications. In fact, the baby's neurologist said, "We may have to consider placement of a gastronomy tube in order to maintain her nutrition and physical growth."

She still had hydrocephaly, or water on the brain, and she couldn't hold her head up because it was so heavy. She suffered from apnea—in other words, a condition where breathing spontaneously stops. She had several brushes with death. She had undergone eight brain operations.

Finally, through all of that trauma and all of the problems, she survived and she will be here tomorrow. Donna Joy continues to be, at 6 years of age, an inspiration. She continues to battle holoprosencephaly, hydrocephalus, cerebral palsy, epilepsy, tunnel vision, and Arnold-Chiari Type II malformation that prevents formation of her medulla oblongata.

Despite these hardships, having only a small fraction of her brain, she runs, walks, plays, has a healthy appetite and even likes Big Mac's, and she is taking karate lessons now. She has earned her white belt and performed in karate demonstrations.

Before Donna Joy moved to Pennsylvania, Greencastle, PA, Franklin County, Maryland Governor Parris Glendening honored her with a certificate of courage commemorating her fifth birthday. Mayor Steve Sager, of Hagerstown, MD, proclaimed her birthday Donna Joy Watts Day. Members of the Scott Bakula Fan Club, who is someone who helped Donna Joy get through some very difficult times with his songs, have sent donations and Christmas presents to the Watts family. People from around the world have learned about Donna Joy on the Internet and write, e-mail her, and send her gifts. But perhaps the most important thing was because of Donna Joy's determination, it inspired a Denver couple to fight for their little boy under similar circumstances.

This is Donna Joy's story, this little girl who was considered by the medical world as somebody who was not worthy to live, someone on repeated occasions who would have been aborted using partial-birth abortion, who I have had the time to spend time with, and my children have, too. She is not a burden, although I understand from Lori she can be a handful like any other 6-year old. She is not a heartache or a sorrow, as some would describe children with disabilities who need to be aborted. She is a beautiful, marvelous, wonderfully made gift from God, who has inspired so many to understand just that fact. She will be here tomorrow, possibly standing next to the women who want to keep this procedure legal, so we can kill people like Donna Joy Watts in a brutal fashion, in an inhumane fashion, in a painful fashion, in a fashion, as I quoted today from the AMA Journal, that would violate Federal regulations on the treatment of animals used in research. We could not do to animals used in research legally in this country, we could not do what we do every day in this country to little babies because they are not wanted, in some cases not wanted because of their deformity but in the vast majority of cases they are just simply not wanted. What a high price to pay for one person not wanting you to be around, the ultimate price to pay.

Tomorrow, we are going to have the opportunity to show the world the direction the United States of America is taking. We are involved right now in a moral crisis in this country, on the front page of the paper every day. It is no wonder that we are in a moral crisis.

Back in 1972, 1973, when Roe v. Wade was decided, many people said that this was going to be a breakthrough for women and for children, that all these wonderful things would happen to our society as a result, to children and to women, as a result of the legalization of abortion. We would eliminate unwanted pregnancies, and the result of that would be less child abuse because we wouldn't have all these children nobody wanted, illegitimacy would go down, child poverty would go down because we wouldn't have all of these poor kids around that we don't want. Spousal abuse would go down, divorce would go down, less complications in marriages and relationships.

It is a cruel joke. It almost seems laughable to think back 25 years and look at what has happened on every single count. All of the culture indicators that I mentioned go down worse and worse and worse. Those who feared Roe v. Wade back in 1973 were very much on target. The fear was that we would lose respect for life and that we would become so insensitive to life that abortion would be just the beginning of the end of our selectivity of who we include in our society.

And so it has gone, to the point where now we can't even save a little baby almost born. I wish that were the worst. We now have State-assisted suicide laws. We now have debates, active debates on euthanasia. We even have an article from a professor at MIT who argues, or at least makes the case for infanticide—not infanticide on partial-birth abortion but actual infanticide. And then we have the cases of prom mom and the Delaware couple and so many others where we hear around the country of babies being born and then murdered shortly after birth. The initial reaction, while horror, at the same time is sympathy—sympathy for this difficult situation in which these children or kids were put.

We somehow see little children, little babies, different than older children. Older children—if you have killed your older children, that is really bad. We have no sympathy for you. But somehow, if you killed a baby just born we try to figure out a way to get around it. We try to figure out a way that that does not quite meet the threshold of murder. If you look at the punishments meted out—substantially lower. They are substantially lower than other murder cases. We just do not value those little babies as much.

Why? Why? Is it any mystery why? If we start, as we have, down the path of not valuing those little babies because we do not value them in the womb, or four-fifths outside the womb, or just newly outside the womb, who is next? Look around. Who is going to be next? Who is going to be the next group of people who we are not going to value, who does not have the might to force down what they believe is right? I made it. I am here in this body. I am whole. I am healthy. If you have not made it yet, watch it, because it then depends on whether you are on the committee that decides, or you are on the court that decides who lives and who dies. Because there is no line anymore. There is no truth on which we are basing this. There is no "life or nonlife." There is might. There is political power and that is what determines who lives and dies, who is valuable and who is not.

Tomorrow, 34 Senators can exercise their might on who lives and dies. They can decide for a country that a group of people, a group of little helpless babies, do not belong.

I am hopeful that when tomorrow comes, after much prayer tonight by so many people all over the country, and the world, that three more Members will open their eyes when they wake up in the morning and realize that but for the grace of God, there go I, and that we have to open our hearts more and include the least among us, the little children.

Mr. President, I yield the floor.

ADJOURNMENT UNTIL 8:30 A.M. TOMORROW

The PRESIDING OFFICER. The Senate, under the previous order, will stand adjourned until 8:30 a.m., Friday, September 18, 1998.

Thereupon, the Senate, at 10:21 p.m., adjourned until Friday, September 18, 1998, at 8:30 a.m.